

U.S. DEPARTMENT OF COMMERCE  
National Technical Information Service

PB-247 427

GAMBLING - THE ISSUES AND POLICY DECISIONS INVOLVED  
IN THE TREND TOWARD LEGALIZATION.

A STATEMENT OF THE CURRENT ANACHRONISM OF BENIGN  
PROHIBITION

COMMISSION ON THE REVIEW OF THE NATIONAL POLICY  
TOWARD GAMBLING

1975

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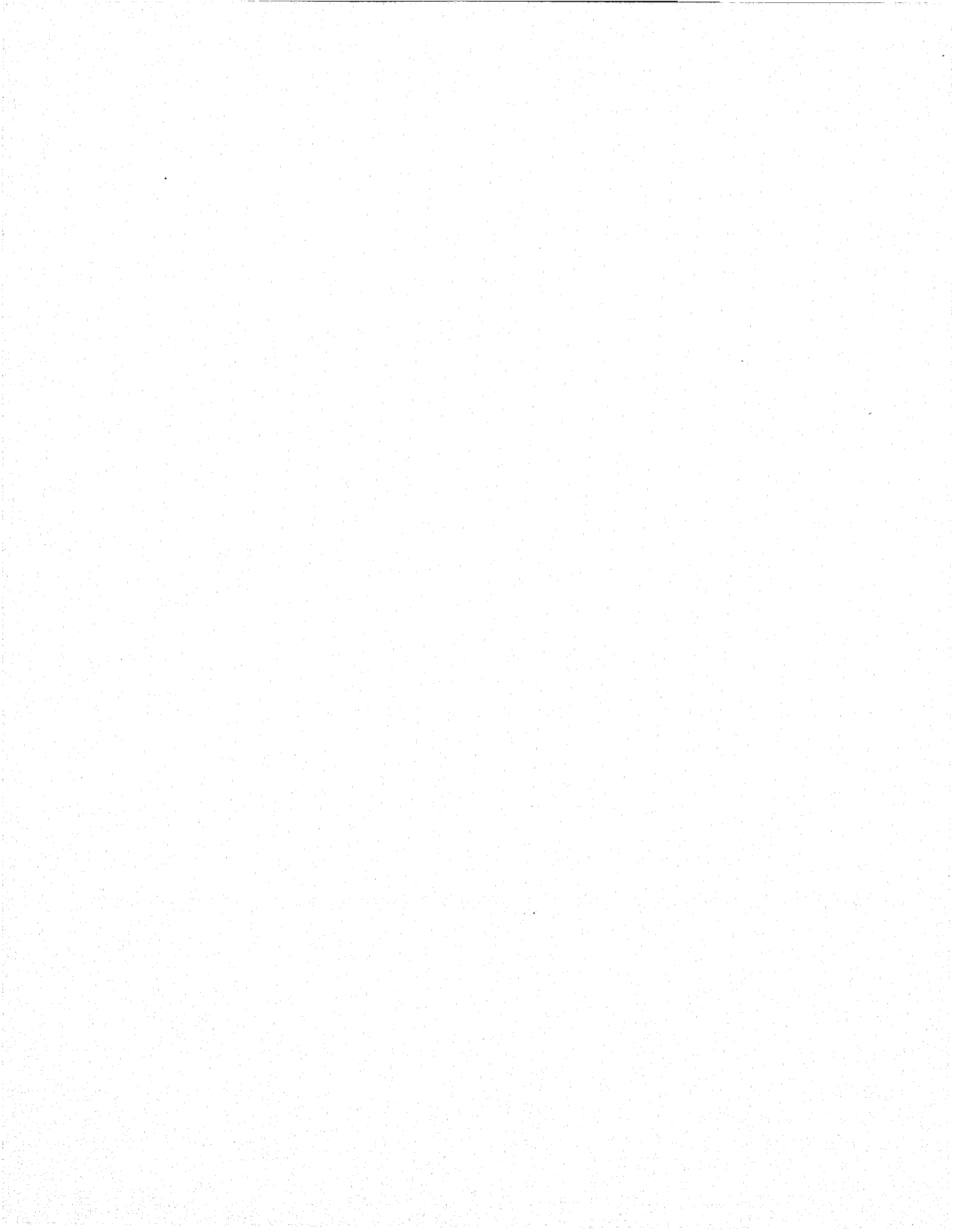
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PB 247 427

GAMBLING--THE ISSUES AND POLICY DECISIONS INVOLVED IN THE  
TREND TOWARD LEGALIZATION--A STATEMENT OF THE CURRENT  
ANACHRONISM OF BANNING PROHIBITION

By  
Patricia Reising

Prepared for the Commission on the Review of the National Policy Toward Gambling  
Suite 3302, 2000 M Street, N.W., Washington, D.C. 20036  
202-254-8686

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Springfield, VA. 22151

<b>BIBLIOGRAPHIC DATA SHEET</b>	1. Report No. NGC-75/08	2.	3. Recipient's Accession No.
4. Title and Subtitle Gambling--The Issues and Policy Decisions Involved in the Trend Toward Legalization--A Statement of the Current Anachronism of Benign Prohibition		5. Report Date Spring 1975	
7. Author(s) Patricia Helsing		8. Performing Organization Rept. No.	
9. Performing Organization Name and Address Commission on the Review of the National Policy Toward Gambling 2000 M Street, N.W., Suite 3302 Washington, D.C. 20036		10. Project/Task/Work Unit No.	
		11. Contract/Grant No.	
12. Sponsoring Organization Name and Address same		13. Type of Report & Period Covered	
		14.	
15. Supplementary Notes			
16. Abstracts  A discussion of the conflicting gambling postures in effect today in the United States--at the local, State, and Federal levels. This paper, prepared for the National Gambling Commission, discusses gambling as a source of revenue, gambling and organized crime, gambling-related corruption, and gambling policy decisions.			
17. Key Words and Document Analysis. 17a. Descriptors			
17b. Identifiers/Open-Ended Terms			
17c. COSATI Field/Group			
18. Availability Statement No restriction on distribution. Available from NTIS, Springfield, Va. 22151		19. Security Class (This Report) UNCLASSIFIED	21. No. of Pages 19
		20. Security Class (This Page) UNCLASSIFIED	22. Price 3.50

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GAMBLING--THE ISSUES AND POLICY DECISIONS INVOLVED IN THE  
TREND TOWARD LEGALIZATION--A STATEMENT OF THE CURRENT  
ANACHRONISM OF BENIGN PROHIBITION

The trend toward legalized gambling that began in the sixties shows little sign of abating more than a decade later. Whether the momentum will be sustained until a climate of total permissiveness is attained is difficult to predict, but as more and more States consider proposals to legalize one or more forms of gambling, it becomes increasingly important that lawmakers formulate gambling policies that are consistent with the objectives they hope to achieve. Equally important is that these objectives have the capacity to coexist.

The policies that a locality, State, or Nation adopts regarding gambling should be predicated upon its basic conception of the propriety of that activity. A society that views gambling as an acceptable social or recreational pastime is likely to sanction many forms of legalized gambling and formulate gambling laws and regulations designed to keep the games honest and free of criminal infiltration.<sup>1</sup> But a society that condemns gambling outright--for moral, religious, or other reasons--will not tolerate any form of legal gambling and will attempt to formulate strong antigambling laws and pursue stringent enforcement policies.

Neither of these gambling postures exists in the United States today, or, rather, both exist partially and are living together poorly. Some forms of gambling are sanctioned by various State governments and others are condemned. The States--hard pressed for revenue--have gradually adopted a more liberal attitude toward gambling because they recognize its revenue-generating potential. At the same time, however, Congress has extended the role of the Federal Government in combating illegal gambling in recognition of the fact that the States are unable to handle the problem alone.

A government that is willing to legalize some forms of gambling is in effect nullifying any moral, ethical, social, or economic censure that may have been implied or stated prior to legalization. Once these restraints are removed, the public may be justified in its refusal to acknowledge the harm in other forms of gambling that have not received the official stamp of approval.

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<sup>1</sup>This is essentially the situation in Great Britain.

While the controversies surrounding gambling are far from being resolved, decisions are being made that could have significant and lasting effects on the gambling habits of Americans and the manner in which these habits are exploited.

If the current trend toward piecemeal legalization continues unhampered by a thorough reassessment of the goals of the legal games and their possible long-range consequences, it is not difficult to envision a situation in which millions of additional gamblers have been created, the legal games enjoy modest success (as they do now), and the illegal gambling business is even more profitable than it is today.

### Legal Gambling as a Source of Revenue

From a government's point of view, there are potentially two sound reasons for legalizing certain forms of gambling: One is to produce public revenue, and the other to drive the illegal operators out of business. Proponents of legalized gambling may also point out that gambling can be an enjoyable form of recreation, a powerful anti-depressant,<sup>2</sup> or even an alternative to loneliness, but ideas like these are never more than peripheral considerations when the State legislature debates the legalization issue.

Some authorities believe that the two primary goals espoused for legalization--revenue and law enforcement--are not combatible with one another,<sup>3</sup> and that any attempt both to maximize the revenue potential of legal gambling and compete successfully with the illegal game is likely to fail. The basic reasoning is this: In order to compete with illegal gambling, the legal operator must offer comparable benefits in terms of payoff ratios, taxation, accessibility, credit, and variety of games. As the legal games become more competitive, the operator's profit declines.

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<sup>2</sup>Young, Patrick, "Will Your Child be an Addicted Gambler," The National Observer, March 23, 1974.

<sup>3</sup>See, for example, The Twentieth Century Fund, Easy Money, Report of the Task Force on Legalized Gambling (New York: 1974), p. 9ff.

Despite occasional setbacks,<sup>4</sup> legalized gambling is slowly expanding its constituency. Various forms of gambling are legal in 32 States.<sup>5</sup> Off-track betting is legal in New York and Nevada and is under consideration in at least seven other States. State lotteries are being considered in about 10 States in addition to the 13 already operating. Thirty States permit on-track betting at horseraces and at least seven others are considering it. Casino gambling is being considered in about nine States, and sports betting (one of the most controversial types of gambling) is legal in two States<sup>6</sup> and under consideration in a third.<sup>7</sup>

Public officials charged with the seemingly impossible task of balancing the city or State budget often look upon gambling as a potential source of fiscal relief. If legalized gambling can contribute to the public treasury, particularly when no additional taxation will be tolerated, it sometimes will be viewed as an acceptable activity.

Testimony given at hearings before the Commission on the Review of the National Policy Toward Gambling, which is currently in the process of studying gambling laws and practices, indicates that the primary purpose of the legal lotteries currently in operation is the production of revenue for State and local coffers.<sup>8</sup> Although in almost all cases, early predictions of lottery profits proved to be overoptimistic, all of the State lottery officials who appeared before the Gambling Commission testified that they considered their operations to be successful and thought they could become even more profitable if certain Federal restrictions on the use of the mails and communications media were removed.<sup>9</sup>

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<sup>4</sup>In November 1974, New Jersey voters defeated a referendum that would have legalized casino gambling in Atlantic City and in January 1975, a committee of the Virginia House of Delegates voted down a State lottery.

<sup>5</sup>Nevada is the only State in which most forms of gambling are legal. The major exception, lotteries, is prohibited by the State's constitution.

<sup>6</sup>The two States are Nevada and Montana. Montana residents are permitted to bet in sports pools with limits of \$100 in a pot. Legislation is currently under consideration that would raise the limit to \$500 or \$1,000.

<sup>7</sup>NLW Newsletter, Vol. 4, No. 1, January 1975.

<sup>8</sup>Hearings held before the Commission on the Review of the National Policy Toward Gambling, April 3, 1974.

<sup>9</sup>18 U.S.C. 1307, enacted in December 1974, removed some of the Federal restrictions on the intrastate mailing and broadcasting of lottery information.



The use of legal gambling to generate revenue is not a new idea. Although it would be difficult to support one author's claim that the American colonies were "floated on lotteries,"<sup>10</sup> it is nevertheless true that the lottery was a convenient fundraising tool for many purposes. In 1748, Benjamin Franklin sponsored a lottery drawing in Philadelphia in order to raise money for a cannon to defend the city. After the Revolutionary War, most of the legal lotteries were operated by the States. The proceeds were used to build roads, transportation, and communications facilities. Between 1790 and 1860, 24 of 33 States had financed internal improvements by lottery. Lotteries supported orphanages, hospitals, and other humanitarian facilities. Churches, too, often were lottery beneficiaries. The largest and most infamous lottery of all was the corrupt Louisiana Lottery, which the Federal Government finally succeeded in eliminating through the passage of a series of progressively stronger statutes.<sup>11</sup>

At the height of its success, the Louisiana Lottery earned profits of \$13 million a year and was said to have "controlled governors, legislatures, and officials."<sup>12</sup> The bitter memory of this scandal faded slowly; the State lottery remained a uniformly proscribed activity until New Hampshire established the 20th century's first legal State-operated lottery in 1964.

The most lucrative and prevalent form of legalized gambling takes place at horseraces, which have been a popular spectator sport since colonial times. Like the lottery, the races often were plagued by graft and corruption. In 1900, only three States still permitted racetrack betting, but by the height of the depression, 21 States had allowed financial considerations to overcome whatever reluctance they may otherwise have had to reinstate legal horserace betting. The acceptability of horseracing was no doubt aided by the development of the parimutuel system of betting in which bettors wager against one another instead of against a bookmaker. This system helps minimize the possibility for fraud, just as modern computer technology has helped the States maintain tight control over lottery records.

In 1974, the annual handle for all legal State lotteries combined was \$681 million; the State governments' share was \$300 million. The parimutuel racing handle in 1973 was \$7 billion, and the governments'

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<sup>10</sup>Chafetz, Henry, Play the Devil; A History of Gambling in the United States from 1492 to 1955 (New York: C. N. Potter, 1960).

<sup>11</sup>These statutes have become 18 U.S.C. 1302 and 1303.

<sup>12</sup>Bender, Eric J., Tickets to Fortune; the Story of Sweepstakes, Lotteries, and Contests (New York: Modern Age Books, 1938), p. 134.

take \$553 million.<sup>13</sup> As for the individual States, gambling profits represent on the average of 2 or 3 percent of the annual State-level revenue in States where one or more forms of gambling are legal.

Opponents of legalized gambling usually argue that these small percentage additions to State revenue could be raised in a more efficient manner and in a form of honest, nonregressive taxation that does not disguise itself as a game,<sup>14</sup> but supporters counter that although the percentages may be small they represent real money used for the public good and generated through contributions that are entirely voluntary.<sup>15</sup>

### The Anachronism of Benign Prohibition

Coexisting in a noncompetitive environment with the expanding legal gambling market is a flourishing illegal gambling trade that law enforcement officials, prosecutors, judges, and the public are either unable or unwilling to eradicate.

There exists in the United States today a climate of benign prohibition of gambling in which official restraints impose only minimal burdens on the operators and even fewer on the wagering public. Benign prohibition translates into benign law enforcement and is characterized by the following factors:

1. Enforcement of gambling statutes by State and local authorities often is minimal because agencies lack the manpower and resources to conduct thorough gambling investigations.
2. Gambling is considered a low priority offense in comparison to violent and property crimes such as murder, rape, robbery, and burglary.
3. Gambling-related corruption of local law enforcement personnel is widespread in many police departments and this substantially weakens the enforcement effort.
4. Many law enforcement officials believe that gambling laws as now written are unenforceable and they consequently ignore gambling

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<sup>13</sup> Figures quoted from NLW Newsletter, December 1974, and The American Racing Manual (Highstown, N.J.: Triangle Publishers, Inc., 1974).

<sup>14</sup> See, for example, Rosen, Sam and Desmond Norton, "The Lottery as a Source of Public Revenue," Taxes--The Tax Magazine, September 1966.

<sup>15</sup> Gambling Commission hearings, April 3, 1974.

violations<sup>16</sup> or pursue enforcement policies that amount to little more than periodic harassment.

5. Penalties for gambling offenses are relatively light, and sentences for convicted offenders often are considerably less severe than they could be.<sup>17</sup>

Benign prohibition of gambling coupled with the continuing trend toward legalization may actually foster the growth of illegal gambling. According to one Justice Department official, partial legalization makes it more difficult to conduct successful prosecutions against illegal gambling.<sup>18</sup> One reason is that partial legalization may have the effect of legitimizing in the public's mind the illegal games as well.<sup>19</sup> Another is that the current forms of legalized gambling cannot be expected to compete successfully with the illegal games, which may offer better odds, credit, and tax-free winnings. With only moderate interference from the law, illegal gambling could one day succeed in exploiting a market of new clients initiated into the world of gambling by their own State or local government.

#### Scope of the Problem

The Department of Justice has estimated that the total volume of illegal gambling was \$29 to \$39 billion in 1973.<sup>20</sup> Other estimates range

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<sup>16</sup> Following the release of the Knapp Commission Report (see footnote 27), Commissioner Patrick Murphy of the New York City Police Department declared that his officers would no longer enforce gambling statutes in order to eliminate gambling payoffs to police.

<sup>17</sup> The failure of the judiciary to support gambling laws is underscored by these statistics documented by the Knapp Commission: Of 9,456 felony arrests for gambling in New York City from 1967 to 1970, indictments were obtained in 921 cases, there were only 61 convictions, and for those, sentences were nominal.

<sup>18</sup> Gambling Commission hearings, May 15, 1974, statement of Henry Dogin, Deputy Assistant Attorney General, U.S. Department of Justice.

<sup>19</sup> At present, this theory has not been substantiated by statistical data produced through opinion polls or other means, but the view has been expressed by a number of authorities in the field, some of whom testified at hearings before the Gambling Commission.

<sup>20</sup> Gambling Commission hearings, May 15, 1974, statement of Henry Dogin.

from a low of \$600 million annually,<sup>21</sup> to a high of \$500 billion.<sup>22</sup> The primary sources of these illegal funds are sports betting (64 percent), numbers (25 percent), and horseracing (11 percent).<sup>23</sup>

It is widely believed, although no hard figures are available, that gambling is the largest source of revenue for organized crime, and that a certain amount of the gambling proceeds are used by organized crime to finance other, more nefarious enterprises such as loansharking, narcotics, and corruption of public officials.<sup>24</sup> The Justice Department has estimated that the percentage of illegal gambling controlled by organized crime ranges from 2 percent in the Southeast to 55.4 percent in the Northeast, and is approximately 41.8 percent for the Nation as a whole.

Officials charged with reducing the flow of illegal gambling dollars have widely divergent views regarding the proper solution to the problem. Among the remedies proposed are enactment of stronger antigambling laws,<sup>25</sup> better enforcement of existing laws,<sup>26</sup> and decriminalization (repeal of all antigambling laws).<sup>27</sup>

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<sup>21</sup>Wen L. Li et al, Bulletin of Business Research, Center for Business Economic Research, Ohio State University, April 1973.

<sup>22</sup>Scarne, John, Scarne's Complete Guide to Gambling (New York: Simon and Schuster, 1961), p. 1.

<sup>23</sup>Gambling Commission hearings, May 15, 1974, statement of Henry Dogin.

<sup>24</sup>Ibid.

<sup>25</sup>See, for example, Report of the Special Senate Committee to Investigate Organized Crime in Interstate Commerce (New York: Arco Publishing Co., Inc., 1951); Gambling and Organized Crime, Report of the Committee on Government Operations, U. S. Senate (Washington: Government Printing Office, 1962); and Report on Organized Crime, Pennsylvania Crime Commission (Harrisburg, 1970).

<sup>26</sup>Gambling Commission hearings, May 15, 1974, statement of Henry Dogin and June 26, 1974, statement of William V. Cleveland, Assistant Director of Special Investigative Division, Federal Bureau of Investigation.

<sup>27</sup>Knapp Commission Report on Police Corruption, Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures (New York: George Braziller, 1973).

Justice Department and FBI officials testifying at the May and June 1974 Gambling Commission hearings stated their belief that increased levels of State and local enforcement efforts are needed to bring about more effective control of illegal gambling. Such efforts could be enhanced, they said, if the States with significant gambling problems had at their disposal some of the tools available to the Federal Government, which include wiretap authority, immunity statutes, special prosecutors to fight official corruption, and investigative grand juries. Also lacking at the State and local levels, they believe, are tough sentencing practices in gambling cases.

Although few officials will go so far as to claim that a "two dollar bet means murder,"<sup>28</sup> many will state emphatically their belief that gambling is not a victimless crime:

(1) Gambling and violence go hand in hand. Hoodlums operating numbers or bookmaking rings generally protect their monopolies by savage acts of terrorism....

(2) Gambling saps the financial resources of the nation to deal with social problems by concealing vast sums of money from taxation....

(3) Gambling spawns a whole generation of other crimes... robberies, burglaries, and other crimes by victims indebted to the underworld....

(4) Gambling creates a corps of silent victims caught in the dual fear that assisting law enforcement will cut them off from the services they so desperately crave as well as marking them for gangland retaliation....<sup>29</sup>

Opponents of this position would not hesitate to point out that the above statements are accurate only if the word "illegal" is placed at the beginning of each proposition. The point is significant, as much of the current confusion and controversy concerning gambling stems from a failure to make a distinction between the inherent characteristics of an activity and the characteristics of that same activity once legal prescriptions have been imposed. The act of wagering is not the same as the act of placing an illegal wager.

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<sup>28</sup>Cook, Fred, A Two Dollar Bet Means Murder (New York: The Dial Press, Inc., 1961), illustrates how a seemingly innocent bet with a bookie may lead to prostitution, narcotics traffic, official corruption, and "contract" murder.

<sup>29</sup>Gambling Commission hearings, June 26, 1974, statement of William V. Cleveland.

Although there have been numerous treatises throughout history condemning gambling as a morally loathsome activity,<sup>30</sup> most local, State, and Federal antigambling laws were enacted in response to specific instances of corruption, fraud, or other unsavory practices by gambling operators.

The State and Federal antilottery statutes are a prime example. These statutes dealt with the symptoms of the lottery disease by killing the patient. Apparently this seemed an easier course than attempting to eradicate the corrupt lottery officials and the politicians they in turn had corrupted. Whether it was the wisest course may be the subject of considerable debate.

### Gambling and Corruption

It is not difficult to understand why gambling-related corruption pervades many police departments, particularly large city departments. Police officers raised in urban environments where illegal gambling is a socially acceptable behavior may see little harm in supplementing their income with payments for nonenforcement of gambling laws. In other cases, hesitant rookies may receive their first payoffs from a fellow officer.<sup>31</sup> Lacking the courage and persistence of a Serpico, they may find they have little choice but to go along with the system.

Payments for official complicity are as important to the illegal gambling operations as advertising is to the legal ones. Many authorities agree that without police cooperation, the illegal games could not be carried on profitably.<sup>32</sup>

Estimates of the amount of money spent annually to bribe and corrupt public officials vary considerably. In its report for the New York State Gambling Commission, the Hudson Institute estimated that illegal gambling interests in New York State spend \$40 million a year for "bribes, payoffs, political contributions and other techniques for securing political power

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<sup>30</sup> See, for example, Cotton, Charles, Games and Gamesters of the Restoration: The Compleat Gambler, 1674, and Theophilus Lucas, Lives of the Gamesters, 1714 (London: Kennikat Press, 1930); and Comstock, Anthony, Frauds Exposed; or, How the People are Deceived and Robbed and Youth Corrupted (New York: J. H. Brown, 1880), reprinted by Patterson Smith, Montclair, N. J., 1969.

<sup>31</sup> Pennsylvania Crime Commission, testimony of Robert J. Wiener, December 5, 1971, File No. 115-16-51/1023.

<sup>32</sup> Task Force Report: Assessment of Crime and Criminal Justice in Pennsylvania, Pennsylvania Crime Commission (Harrisburg, 1969).

and protection against law enforcement."<sup>33</sup> One expert has estimated that illegal gambling operators spend as much as 50 percent of their take for the corruption of law enforcement and other public officials.<sup>34</sup>

However widespread gambling-related corruption may be, there is no evidence that it is more of a problem today than it has been in the past. The Louisiana Lottery is the most notorious example of corruption involving a legal gambling enterprise. But the history of illegal gambling and corruption is perhaps even more sordid. As an example, in the late 1890's, in Chicago, illegal gambling flourished with the full knowledge and complicity of the mayor, members of the board of aldermen, and the chief of police:

At a time when Mayor Harrison's chief of police, Joseph Kipley, told the Baxter investigating committee, "There is not a gambling house in Chicago, and the city is freer from gambling today than it has ever been in its history," an estimated two thousand professional gamblers were happily plying their trade within the boundaries of the First Ward, and paying handsomely for the privilege.<sup>35</sup>

Opponents of gambling point to the historical link between gambling and corruption as proof that the two make common bedfellows. They have volumes of evidence concerning gambling corruption to support their convictions. But the fact that a particular activity tends to bring out some of the more unsavory traits of human nature is not necessarily sufficient grounds to prohibit that activity.

Here an analogy can be drawn between gambling corruption and the abuses and corruption of big business that became apparent in the 1800's.<sup>36</sup>

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<sup>33</sup> Hudson Institute, Report to the New York State Gambling Commission, Increased Legal Gambling in New York: A Policy Analysis, Vol. 1, Summary (New York: Gambling Commission, 1973).

<sup>34</sup> Berkley, G. E., Police Behavior in a Democratic Society: A Comparative Study (Ph.D. thesis, Tufts University, 1969), p. 277.

<sup>35</sup> Wendt, Lloyd, and Harman Kogan, Lords of the Levee; the Story of Bathhouse John and Hinky Dink (New York: The Bobbs-Merrill Co., 1943), p. 201.

<sup>36</sup> The analogy between gambling and big business takes on even greater significance in view of the opinion of at least one writer that the early lottery companies were the genesis of big business in America, and that the promotional and management techniques invented by these companies were later adopted by major U.S. corporations. See Ezell, John Samuel, Fortune's Merry Wheel; the Lottery in America (Cambridge: Harvard University Press, 1960), p. 1.

Rather than outlaw big business, the Federal Government enacted antitrust laws and a series of other legislative restrictions designed to counter the various corporate abuses traceable to human greed and lust for power. Presumably the same type of regulatory laws could be passed to control gambling if public opinion supported such a policy. For the time being, however, the public's ambivalence toward gambling would seem to preclude the radical change of direction that this approach entails.

### Gambling and Organized Crime

The public cannot be faulted for its failure to provide policymakers with a consensus of opinion on gambling issues, but it is, according to some officials, unwittingly the cause for some of law enforcement's difficulty in combating illegal gambling. FBI and Justice Department officials testifying before the National Gambling Commission stated that the public is largely unaware of the close link between gambling and organized crime and of the evil this relationship engenders.<sup>37</sup> Although ignorance probably is a factor, it would be difficult to prove that the public continues to gamble primarily because it is unaware of the malicious end uses of its lost wagers. Other considerations may be strong enough to override this concern, such as the pleasure derived from the activity, the belief that gambling is not in itself a morally or socially unacceptable activity, and the sometimes irresistible lure of the potential win.

The link between gambling and organized crime has been highly publicized in literature, film, and through the efforts of various investigatory bodies. In 1951, the Kefauver investigations<sup>38</sup> produced the first hard evidence of this connection and of the extent of gambling-related corruption of public officials. The committee recommended stronger local, State, and Federal enforcement as a solution to the problem. It did not recommend legalization.

A decade later the McClellan Committee made public its findings on organized crime and gambling and called for increased Federal involvement because so much of the problem was of an interstate nature.<sup>39</sup>

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<sup>37</sup> Report of the Special Senate Committee to Investigate Organized Crime in Interstate Commerce (1951).

<sup>38</sup> Ibid.

<sup>39</sup> Gambling and Organized Crime (U. S. Senate, 1962).



Since then several other investigatory bodies, commissions, and study groups<sup>40</sup> have made substantial contributions to the body of knowledge on organized crime and gambling, but this information appears to have had little effect upon the public's gambling habits. Nor does it seem to have weakened the trend toward legalization of gambling in the States, which is based primarily on revenue considerations with little attention to the possible effects on organized crime.

By contrast, Congress and the Federal Government have responded to the revelations by taking steps to intensify the Federal attack on gambling and organized crime.

The Justice Department is attempting to combat organized crime by depriving it of its gambling revenue. Thus, the campaign against organized crime is in large measure a campaign against illegal gambling.

Since 1948, a series of antigambling statutes have been passed to strengthen the Federal antigambling effort. In 1949, Congress enacted 18 U.S.C. 1081-1083, which was effective in eliminating the gambling ships that had been operating off the coast of California. The Johnson Act (15 U.S.C. 1171-1178), passed in 1951, limited interstate transportation of gambling devices. 18 U.S.C. 1084 (passed in 1961) prohibits the interstate transmission of wagering information; 18 U.S.C. 1952 (1961) prohibits the use of interstate commerce facilities to aid an illegal gambling enterprise. 18 U.S.C. 1953 (1961) prohibits the interstate transportation of gambling paraphernalia. The Organized Crime Control Act of 1970 further extended Federal jurisdiction in gambling cases: 18 U.S.C. 1955 makes it a Federal offense to operate an illegal gambling business that employs five or more persons and does business of \$2,000 a day, regardless of any interstate element; and 18 U.S.C. 1511 makes bribery of State and local officials subject to Federal prohibition when the bribery is connected with an illegal gambling business. The above statutes are the Federal Government's primary tools against illegal gambling and are enforced by the Department of Justice. Other Federal agencies with important gambling law enforcement responsibility are the Federal Communications Commission and the U.S. Postal Service.

In addition to the various Federal statutes, the Government has in its arsenal of weapons against organized crime wiretap authority, witness immunity laws, and 17 strike forces consisting of high-level representatives from Federal investigative agencies.

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<sup>40</sup> See, for example, President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, Government Printing Office, 1967); Report on Organized Crime (Pennsylvania Crime Commission); and Knapp Commission Report.

It is difficult to measure the success of Federal antigambling efforts, and part of the difficulty lies in the selection of an appropriate barometer with which to measure gains and losses.

One factor to consider is that where organized crime is concerned, the reduction of illegal gambling is the means rather than the end. If organized crime were to divest itself of all gambling operations, the Federal gambling statutes might fall quickly into disuse. So one measure of the success of the Government's antigambling campaign will be its impact on organized crime.

Several prominent organized crime figures have been successfully prosecuted by the Justice Department for their involvement in illegal gambling activities, among them Raymond Patriarca and Sam Decavalcante. FBI investigations under the 1970 Organized Crime Control Act alone have resulted in 1,600 convictions, approximately \$1,600,000 in fines, and confiscations of cash, property, and wagering paraphernalia valued at approximately \$10,800,000.<sup>41</sup> There is no question that without the aid of the antigambling statutes, Federal efforts to prosecute organized crime figures would be much more difficult, but it also is true that the Government is not succeeding in eliminating organized crime but merely in checking its growth.<sup>42</sup>

A second factor to consider is that gambling investigations are expensive and time consuming to conduct. One investigation in New York, for example, required the use of 20 agents for a full year. Another standard for measuring success thus could be a determination of whether the time and effort expended are justified by what is achieved, or whether these resources could be put to better use elsewhere. But here a number of questions arise; among them: How could achievements be measured: by the number of arrests, convictions, length of sentences, or value of property confiscated and fines collected? Should the net worth of the gambling operation that has been stopped be the overriding factor, or rather the position in the gambling hierarchy of the convicted operator? Which is more important: securing as many convictions as possible or concentrating resources to reach the specific gambling operations known to underwrite narcotics, loansharking, prostitution, or other activities of organized crime?

The Justice Department does not keep records reflecting the total amount of money and time spent on gambling investigations and prosecutions each year; it did, however, at the request of the National

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<sup>41</sup>Gambling Commission hearings, June 26, 1974, statement of William V. Cleveland.

<sup>42</sup>Ibid.

Gambling Commission, compile data on the number of cases investigated and the results thereof.

From January 1, 1966, through December 31, 1973, the FBI investigated a total of 5,650 gambling cases; 742 were closed for failure to meet the provisions of the gambling statutes, and of the remainder, prosecution was declined in 4,132 cases by U.S. or strike force attorneys, 52 cases were no-billed by Federal grand juries, and 724 cases, or less than 13 percent of those investigated, resulted in Federal indictments.<sup>43</sup>

There are many more statistics that might be quoted in order to judge the effectiveness of the Federal Government's antigambling campaign, but the one that attracts the most attention was provided by a Justice Department official who testified before the Gambling Commission that Federal agencies, with all their statutory authority, investigatory manpower, and other resources were reaching only about 2 percent of the total illegal gambling market.

Statistics are not available at this time on the percentage of illegal gambling reached through the combined efforts of Federal, State, and local governments, but considering current estimates of the amount of money wagered illegally each year, the total would seem to be considerably lower than is needed to make the hazards of a gambling profession outweigh the advantages. The problem takes on even greater significance in view of the trend toward legalization and the potential it creates for a much expanded gambling market.

#### Gambling Policy Decisions

In an ideal situation, the first decision regarding gambling policy will be made apart from considerations of revenue production or law enforcement problems. It will be a determination of whether gambling is a morally and socially acceptable activity.

Acceptable is an umbrella term that allows a wide range of interpretations, including: (1) desirable, (2) productive, (3) more good than bad, (4) neither good nor bad, (5) a permissible vice, (6) potentially harmful to the individual or society but not enough so to warrant proscriptive legislation, or (7) definitely harmful but desired by such a large percentage of the population that attempts at prohibition would fail completely.

If any of the above definitions of acceptability applies to gambling in these terms, then gambling should be legalized and strictly

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<sup>43</sup> Ibid.

regulated to keep the games clean in all respects, and the staffs of social and welfare agencies should be trained to deal with the problems of those who overindulge. If none of the definitions applies, by consensus of the population, then all gambling should be prohibited.

In the real world, the practical and the possible carry far greater weight in policy decisions than the ideal. It would be unrealistic to expect the majority of the people to consider gambling in the terms described above or to prevent special and public interest groups from lobbying for or against gambling on the basis of economic, law enforcement, religious, or other considerations.

But perhaps it is not inappropriate to call for a close reexamination of the trend toward legalization. There are at least two approaches that would be preferable to the current practice of legalizing some forms of gambling for revenue while only minimally enforcing existing laws against others.

The options are:

1. To make a determination that it is more important to deprive organized crime and other criminals of their gambling profits than to raise additional revenue for the States and cities. In this case, gambling would be legalized for the expressed purpose of competing with illegal operations rather than for raising tax revenue.

2. To make a determination that revenue generation through legal gambling is desirable and necessary. In this case, law enforcement efforts against illegal games would be significantly increased and gambling laws rewritten in order to keep the illegal operators from exploiting the lucrative market of new gamblers who have developed an appetite for gambling through participation in the legal games.

Both of these options, while potentially viable, are fraught with uncertainties and questions.

If an attempt were made to eliminate illegal gambling through legalization, should the legal games be run by private operators licensed by the government or should the government operate the games? Is there any way to insure that the legal games would be truly competitive with the illegal ones? Can the legal games be kept honest?

If governments desire to prevent illegal gamblers from exploiting the market of new gamblers created by the current legal games, will they be able to produce the money, manpower, legislation, and know-how

necessary to accomplish the task?<sup>44</sup> Some law enforcement officials, particularly at the local level, believe that an increased enforcement effort of this nature might succeed in securing more arrests and convictions but would fail in the long run because too many people still wish to gamble and see no harm in it.<sup>45</sup> Others feel that antigambling laws--no matter how they are written--are unenforceable.

The National Gambling Commission is conducting research that should help resolve many of the questions that need to be answered before any rational gambling policy can be formulated. But for the time being, governments might be wise to initiate their own analyses of the available options, beginning with a recognition that minimal enforcement of gambling statutes probably is inconsistent with the current practice of legalizing gambling for revenue production.

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<sup>44</sup> One way in which the goals of revenue generation and law enforcement might be reconciled would be to allocate all of the profits obtained through legal gambling to suppress the illegal games. While the legal gambling might be creating an expanded gambling population, at least it would be helping to further the goals of law enforcement.

<sup>45</sup> Gambling Commission hearings, April 10, 1974, statement of Robert J. diGrazia, Police Commissioner of Boston.



**END**