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Introduction

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INTRODUCTION

A comparative approach to the regulation of international gaming has been all but neglected by legal scholars in both common law and, to a lesser extent, civil law jurisdictions. There are of course, exceptions. The most thorough analysis of laws and regulations governing European gaming may be found in B. Aubin, *Die rechtliche Regelung der Gluecksspiele und Spielautomaten in Europaischen Landern.* Within common law countries, the most thorough comparative analysis of gaming law may be found in the proceedings of the various International Conferences on Gambling and Risk Taking sponsored by the Bureau of Business and Economic Research, University of Nevada Reno, which has produced excellent studies on gambling from a number of professional disciplines. Within the United States, there have been several scholarly law review articles on gaming, *e.g.*, N. Rose, *The Legalization and Control of Casino Gambling,*[1] A.J. Hicks, *No Longer the Only Game in Town,*[2] R. Maxwell, *Casino Development in Atlantic City: Abuses and Remedies.*[3] Moreover, G. Robert Blakey's, *Gaming, Lotteries and Wagering: The Pre-Revolutionary Roots of the Law of Gambling,*[4] is a thorough analysis of the history of gambling. In 1980, the *Connecticut Law Review* devoted an entire issue toward domestic gaming articles.[5] *Rutgers-Camden Law Journal* has also devoted several issues to gaming topics, primarily concerning New Jersey law.[6] Examples of current social science and policy analyses of gambling in the United States and abroad can be found in *The Annals of*

1. 8 FORDHAM URB. L.J. 245 (1979-80).
2. 12 SW. L. REV. 583 (1980-81).
3. 10 VT. L. REV. 383 (1985).
4. 16 RUTGERS L.J. 211 (1985).
5. *Legal Aspects of Public Gaming,* 12 CONN. L. REV. 661 (1980).
6. *See, e.g.,* 16 RUTGERS L.J. 431 (1985).

the American Academy of Political and Social Science,[7] and the *Nevada Public Affairs Review.*[8] Among the scholarly British works are D. Miers, *The Management of Casino Gaming,*[9] and J. Finney, *Gaming Lotteries, Fundraising and the Law.*

This increasing interest in gaming law is undoubtedly influenced, at least in part, by a more tolerant attitude toward gaming in countries such as Australia, Great Britain, Austria, West Germany, Spain and Canada, as well as various American states. Examples of this interest in international gaming law are the formation of the International Bar Association Section on Gaming and Lotteries which presented scholarly papers at the 21st Biennial Conference of the International Bar Association (New York, September, 1986), the International Association of Gaming Attorneys and the Gaming Law Committee of the General Practice Section of the American Bar Association. IAGA and the ABA's Gaming Law Committee have held international gaming law seminars in London, Monte Carlo, Puerto Rico, and Ireland.

Whether gaming is morally good, bad or indifferent is irrelevant to the authors of this issue. What is significant is that an increasing number of jurisdictions have legalized gaming in order to ameliorate the expenses of government by taxing gaming profits; which are far more painless on the general public than raising taxes through more traditional means. Within the United States, this relatively recent phenomenon of legalized gambling has flourished, especially since the legalization of the New Hampshire lottery in 1964.

Gaming regulation varies considerably among jurisdictions and within the provinces and states of various countries. Take, for example, the issues of the compulsive gambler and gambling debts. In France and Austria, the compulsive gambler may request that his name be placed on a blacklist of excluded players. In Spain, if it is proven that a compulsive gambler filed bankruptcy because of gaming debts, then the gambler is subject to criminal penalties. In Great Britain, impulse gaming is discouraged by a 48-hour waiting period before a prospective gambler may join a gaming "club," such as a casino. Furthermore, laws concerning the signing of "bank" checks by a compulsive gambler have been interpreted by British courts so as to make it all but impossible for the casinos to cash such a document. Thus, the Gaming Act of

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7. 474 ANNALS 72 (1984).

8. No. 2, 1986. *See also* COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING, *Gambling in America* (Washington, D.C.: Government Printing Office, 1976); U.S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, NATIONAL INSTITUTE ON LAW ENFORCEMENT AND CRIMINAL JUSTICE, *The Development of the Law of Gambling:* 1776-1976 (Washington D.C.: Government Printing Office, 1976).

9. 1981 BRIT. J. CRIM. L. 79.

1968, which repealed the Statute of Anne's prohibition of gaming debts, has been most strictly interpreted by British courts. Within Nevada, where gaming revenues constitute a substantial percentage of the state budget, gaming debts have only been legally enforceable since 1983.

This issue of the *New York Law School Journal of International & Comparative Law* presents a number of articles that address relevant international legal and policy issues. In *Enforcement of Gaming Debts in Britain,* N. Fagan, Esq., discusses the unique historical development of British gaming legislation, which resulted in the Act of 1960, and opened the floodgates for casinos within Great Britain. With the Gaming Act of 1968 came the most stringent and narrow circumstances for regulating gaming, especially concerning check cashing, *e.g.,* the creditor must cash the check within a stated time period and may not settle for anything less than the entire amount, which, in Fagan's opinion, often creates "insurmountable difficulties" for collection. Fagan further discusses the problems with enforcing gaming debts on nonresidents of Great Britain because of the difficulty in obtaining proper service of process, and enforcing the judgment once obtained.

According to the article by Prof. J. Kelly, within Great Britain, the Gaming Act of 1968, established an all-powerful administrative agency, the Gaming Board, which in effect granted casinos a de facto monopoly in return for having the most pervasive regulatory power over every aspect of casino gaming. In contrast to the United States, which contains a myriad of federal and state statutes and regulations, British gaming law is heavily controlled by the Gaming Act of 1968 and its concomitant enforcement by the Gaming Board. In his analysis of British gaming law, Kelly explains that all factions and parties within Parliament believed that the proposed Board should be nearly omnipotent, and within a short time the Board reduced British casinos by over 90%, eliminated sucker bets and ensured honesty within gaming. In time, the Board relied less on administrative regulations and more on emphasizing voluntary cooperation with associations of the regulated gaming interests.

In contrast to the thoroughly regulated British gaming, in *Gaming on the High Seas,* R. Faiss and A. Cabot concentrate on an area of gaming marked by the lack of regulation, except by United States law. In contrast to other jurisdictions, if an American citizen or registered ship is involved, citizenship or registry alone is sufficient to confer jurisdiction upon the United States over extraterritorial acts. Furthermore, state law, for example, Nevada, makes it extremely difficult for a gaming licensee to participate in gambling on the high seas. The authors also point out that there are significant constitutional problems

concerning this Nevada regulation which may surface under the Supremacy Clause and the "dormant" Commerce Clause of the United States Constitution. It is still uncertain, as the authors explain, what liability gaming promoters might face pursuant to state and federal law if gambling on the high seas is permitted anywhere between the three and twelve mile limits.

In a matter similar to regulation of high seas gaming, there are, as Prof. I.N. Rose explains in his article, *The Impact of American Laws on Foreign Legal Gambling,* unsettled constitutional issues concerning the federal regulation of advertising by legalized lotteries, irrespective of whether they are state or foreign lotteries. These constitutional issues are especially ripe given the reemergence of commercial speech protection. Prof. Rose's article is a survey of all federal and state laws that affect foreign legal lotteries, racetracks and casinos. It analyzes the history of U.S. anti-gambling laws and predicts what can be expected in the immediate future. Prof. Rose further explains the enigma that a state which has legalized lotteries may advertise only in an adjacent state which also has legalized lotteries. Thus, California may advertise in Arizona, but not Nevada (its constitution prohibits lotteries) or Washington (which is not adjacent to California). Foreign legal lotteries are not only prohibited from advertising within the United States, they may not even theoretically "pass through" lottery information. The Full Faith and Credit Clause of the United States Constitution requires states to recognize final judgments in sister states concerning gaming bets, but not necessarily to grant recognition to final judgments in other countries. As Prof. Rose explains, only New York and New Jersey courts will enforce foreign court judgments relevant to gaming debts, irrespective of their legality. The article also discusses the many unanswered legal questions involving the recent technological breakthrough concerning transnational gambling.

Finally, Profs. J. McMillen of Griffith University (Australia) and W. Eadington of the University of Nevada Reno explain in *The Evolution of Gambling Laws in Australia* how Australian gaming law has evolved over the past century from a class-based and moralistic framework to an egalitarian-based economic activity largely run by the state governments for tax revenue generation throughout the country. Unlike Britain, the Australian government, especially since the 1960's has become increasingly dependent upon gaming revenues and has actually introduced new forms of gaming. In a manner similar to that of the United States in the pattern of legalization of lotteries, Australian state governments have tried to legalize lotteries on the rationale that if they did not, revenues from citizens would simply go to other Australian states. The article also examines the recent wave of casino le-

galization which has taken place in all but one of the Australian states since the 1970's, allowing private operators to bid on potential casino sites, but establishing government sanctioned monopolies for those successful bidders, allowing the government to share in the excess profits through comparatively high negotiated tax rates.

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