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BOOKS

Reviewed

THE LAW, GAMBLING, AND EMPIRICAL RESEARCH

GAMBLING IN SWEDEN. By Nechama Tec. Totowa, N.J.: The Bedminster Press. 1964. 139 pages. \$5.00.

Although we copiously legislate against gambling, we know precisely little about its effects. Except for some rough estimates of turnover figures and of the number of people who "gamble," we know only that there is widespread illegal gambling going on, that the people who operate it are underworld characters, and that the gambling laws present a twofold problem to law enforcement: they are difficult to enforce and an eternal threat of corruption to the enforcers.

These laws, like all sumptuary provisions, reveal a puzzling pattern. While most of our states have statutes that forbid virtually all gambling, there is one state which in fact lives on it; it not only encourages and solicits the business, but even permits your being politely turned out if you come only to watch. As recently as 1906 betting on horses was permitted only in three states: Kentucky, Maryland, and New York. Today about half of our states allow betting on horses or dogs, provided the bet is placed at the track and the pari-mutuel system is employed. But in all but one state it is a crime to place the very same bet with a bookmaker.

Offhand one might be inclined to trace the antigambling statutes back to what we call our Puritan tradition. But the attempt would not succeed. Gambling was firmly rooted in colonial times. The country must have been blanketed with lotteries. In 1612 the Virginia Company raised funds for its expedition to America through a lottery; lotteries provided Rhode Island in 1744 with a bridge over the Woboset, and New York in 1746 with funds for its fortifications; in 1749 a lottery founded King's College, the predecessor of Columbia University; in 1776 the Continental Congress proposed a national lottery, and at some later point it was even planned to restore Jefferson's finances through a private lottery; and so it went. In 1831 the City of Philadelphia had 127 lottery offices.

It was about that time that the reaction set in. Corruption seems to have become rampant, and one state after the other abolished gambling and lotteries; some states even wrote their prohibition into the constitution.

By now we have statutes directed against such diverse objectives as gambling itself, against people who make gambling their business, against certain gambling devices such as pinball and slot machines; and withal the law's purpose is not quite clear.

While some may contend that the law is directed simply against gambling as a *malum in se*, the practice of its enforcement makes this doubtful. Private, social gambling is factually exempt from prosecution everywhere, and an optional provision in the Model Anti-Gambling Act, sponsored by the American Bar Association, suggests making the exemption a matter of statute. It proposes to exempt from prosecution gambling "which is incidental to a bonafide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly in professional gambling."¹

We also know that bingo games and other small lotteries are, as a rule, safe from prosecution if they are conducted for charitable purposes. Whatever the specific concern, the community's and hence the law's attitude toward gambling is ambivalent. This is precisely the situation where more knowledge concerning the consequences of gambling might advance our thinking.

It is, therefore, with pleasurable anticipation that one opens a study on the scope and effects of gambling by a sociologist trained in the United States, even though it concerns gambling in a country probably very different from ours. The study is based, properly enough, on a comparison of detailed interviews with a representative cross section of some four hundred "Gamblers" and four hundred "Non-Gamblers."

The gambling covered is pool betting on the outcome of the weekly soccer games. In the twenties, this type of betting had been bootlegged into Sweden by operators of the British pools. But when the illegal pastime became ever more popular and good Swedish kroner were lost to England, the government made soccer betting legal, founded a company to operate it, and has been drawing handsome revenue from it ever since.

The incidence of betting is astonishingly high. Not less than forty-two per cent of all men were found to bet every week; only twenty-three per cent bet never. The betting pervades all classes of the population, the lower classes only somewhat more than the upper ones. Education is negatively correlated with betting; that is, within the same social class the less educated bet somewhat more.

The statistical evidence shows that the Gamblers and the Non-Gamblers are equally responsible citizens; they are equally interested in friends and social life; they are equally happy with their marital sex

1. 2 ABA COMM'N ON ORGANIZED CRIME, ORGANIZED CRIME AND LAW ENFORCEMENT 74 (1953).

life; in fact, both of them have equally little doubt that "their wife is the best one they could wish for."²

Except for somewhat less satisfaction with their jobs—which does not surprise, since the Gamblers are on the average poorer—and except for their going less frequently to church—which does not surprise either—the Gamblers are in no way different from their nonbetting counterparts. In short, there is no evidence that this type of gambling does any harm, although it is certainly widely spread; more widely in fact than in England, the mother country.³ These findings, it is claimed, echo that of the British Royal Commission, which could find "no support for the belief that gambling, provided that it is kept within reasonable bounds, does serious harm either to the character of those who take part in it, or to their family circle and the community generally."⁴

The policy conclusion the study draws from all this is that gambling ought to be legalized; it has no major deleterious effects, and all that legalization does is to take the business away from the crime syndicates.

There is also an effort to shed some light on the motivation for gambling beyond the obvious one of hoping to make a quick killing. A modest inverse relationship between the percentage of Gamblers found in various social strata and the availability for that group of conventional channels for social advancement is cited as evidence for the theory that gambling is to some extent the consequence of, and a safety valve against, such frustration.

The book also pays proper respect to all earlier studies of gambling; it has all the appropriate footnotes and a fine bibliography at the end. And so all seems well—until some doubts occur concerning the very foundation of this research design.

"Non-Gamblers," it will be remembered, are being compared to "Gamblers," the latter being defined as men who "wagered every week and those who wagered once or twice a month."⁵ The Non-Gamblers, one discovers—not without some trouble, because the fact is nowhere expressly stated—are by no means men who never play the soccer pool; only about half of the Non-Gamblers are real nongamblers; the other half bet anywhere from "seldom" to "once in two months." Although it is a messy setup and one wonders why the comparison was not made

2. The actual percentages here are amusingly high: Only 2% of the gamblers and 1% of the nongamblers say "no" to the question, "Do you think your wife is the best one you could wish for?" Either marriage Swedish style is as happy as all that—or the interviews were conducted in the wife's presence.

3. In England 51% of the male population placed at least one bet in the soccer pool during a year's time as against at least 66% in Sweden. Pp. 6, 12 (citing 1951 ROYAL COMM'N ON BETTING LOTTERIES AND GAMING REPORT 150).

4. P. 29 (citing 1951 ROYAL COMM'N ON BETTING LOTTERIES AND GAMING REPORT 45).

5. P. 6 n.19.

only with real nongamblers, this is not too serious a defect. Why, though, is there not at least a single table investigating how the Seldom-Non-Gamblers differ from the Real-Non-Gamblers? But then a much more serious suspicion arises: Perhaps soccer pool betting is not the only type of gambling, and the Non-Gamblers of this study are gamblers in some other area? Checking back, one finds a few lines that are obviously meant to reassure:

Our investigation . . . is based on . . . data on this country's most popular form of wagering: betting on the outcome of soccer matches. Although the . . . data . . . deal with one form of gambling, the . . . analysis . . . gives us insight into the social implications of gambling in Sweden but also adds to our understanding of gambling . . . in general.⁶

Then, in an effort to learn a bit more about gambling "in Sweden and in general," one comes across a circumspect Canadian report, which carefully reviews the experiences of other countries with gambling and gives some interesting data on gambling in Sweden.⁷ We learn that the Swedes indeed wagered around 181 million kroner in soccer pools in 1959. But reading a little further, we discover that the citizens of Sweden have two additional opportunities for legal gambling: horse racing, primarily harness racing, and a state lottery. The amounts wagered there add up as follows:

Swedish Legal Betting in 1959

	<i>Million Kroner</i>	<i>Per Cent</i>
Soccer Pool	181	28
Horse Racing	194	31
Lottery	<u>264</u>	<u>41</u>
Total	639	100%

It turns out that the soccer pool accounts for only twenty-eight per cent of the total amount wagered, a fact that has a devastating consequence for this study of "Gambling in Sweden." If the sample of the study is representative of the male population of Sweden between eighteen and fifty-five—and we assume it is⁸—then the eight hundred men in this sample must have wagered two and one-half times as much on horses and lottery tickets than they put into the soccer pool.⁹

The big question, of course, is who bets on horses and lotteries? Are

6. P. 3.

7. ONTARIO ATTORNEY GENERAL'S COMM. ON ENFORCEMENT ON THE LAW RELATING TO GAMBLING, REPORT, Supplementary Materials 8, 37, 38, 56.

8. The sample used was "a special type of multistage probability sample of Swedish men . . . conducted in 1954 by the Swedish Institute of Public Opinion." P. 6.

9. $72\% = 2\frac{1}{2} \times 28\%$.

they only the people who also bet weekly or bi-weekly in the soccer pool? That would save the design of the study, but the chances of this being true must be nil. Such a coincidence is particularly unlikely because of the different price level in these three areas. The median weekly wager in the soccer pool, for instance, is somewhere around two kroner (forty cents); only one per cent of all the people wager more than fifteen kroner—which is the price of a ticket in the lottery. Since this study makes so much of the fact that wealthier people buy fewer pool tickets, it is a highly relevant question as to whether they do not buy more lottery or horse racing tickets instead.

The failure to inquire of the interviewees whether they do other gambling, aside from the soccer pool, is therefore fatal. It renders any conclusion about the effects of gambling worthless.¹⁰ The embarrassment for the flaw must be shared by Miss Tec's academic sponsor who gave her the original data for analysis for her doctoral thesis, the more so since he is Swedish.

There is one last sobering afterthought to *Gambling in Sweden*. Suppose there were no other wagering in Sweden than pool betting. How could one reasonably expect people who once a week back up their ball game prediction with a bet of forty cents to be very different from those who don't? This is another way of wondering why one would undertake such a study in the first place.

If, then, *Gambling in Sweden* does not help us, what kind of research ought we to undertake? The most sensible thing to do here is probably a forthright, intelligent market survey of the gambling needs or desires of the American consumer, of the ways these needs are now being satisfied, and of their social costs under the present system of semilegality. It sounds a bit unusual but it is probably the only decent way to proceed. Once size and nature of the demand are established, it will be easier to find ways of satisfying it without endangering the moral health of our society and without having to share the proceeds with the underworld.

In such an undertaking, what we call gambling should be seen realistically as a great many different activities, the personal and social significance of which varies. The following are some of the criteria that might prove useful in such an effort of classification:

(1) *Place*. Where is the gambling done? In the home, the home of a friend, the semipublic club, the gambling casino, the race track, or

10. To be sure, both data and analysis are still relevant to the question: Who, given a choice between horse racing, lottery, and soccer pool, will choose the latter? But that is a question of rather limited interest and not at all the one Miss Tec set out to pursue.

There is another mildly interesting use that can be made of the 181 million figure, known to be wagered in the soccer pool. The male population of Sweden eighteen and over is roughly two and a half million; assuming the bettors bet about forty weeks times two kroner a year, the total sum would be about 200 million kroner.

over the telephone? The social impact of each should be quite different.

(2) *Size of bet.* The amount is likely to vary with the financial ability of the bettor but also with the type of event, although some of the more continuous events are likely to increase the wager by cumulation.

(3) *Take of the operator.* His percentages vary between practically zero in some social games to around fifty per cent in the numbers game. Race tracks keep between ten to twenty per cent, the American roulette wheel about five per cent, and cards and dice anywhere up to two per cent.

(4) *Odds.* In some card games and in some roulette bets the odds of winning are close to the fifty per cent line. At the other extreme are lotteries, such as the Irish Sweepstakes, which people may play a lifetime without ever winning anything.

(5) *Loss and gain.* In a way the most important classification concerns the magnitude of the gain or loss. This depends on (1) the size of the bet and, in the long run, on (2) the percentage kept by the operator and (3) the odds of winning.

(6) *Interval of payoff.* For some bets (dice, roulette, cards, etc.) the payoff is practically instantaneous. For lotteries the waiting time is anywhere between a week and a year. The one provides immediate excitement; the other requires patience and looking for different satisfactions.

(7) *Skill and active involvement.* Some types of gambling are clearly a mixture of chance and skill, such as poker. Odds on winning on some sporting events are obviously improved by expert knowledge. Some games of pure chance, such as roulette or numbers or baccarat, involve the player in such a way that he retains the emotional illusion of being able to do the right or wrong thing, even if it involves only cutting "properly" a deck of cards. The emotional ties to and hence the amount of involvement with games about which one "can do something" might well be greater.

(8) *Sponsor.* Whether a game is sponsored by the state, a church, or the crime syndicate makes considerable difference to the player, to society, and to the tax collector.

The policy issue will then be a twofold one: What kind of gambling is to be legalized and under what sponsorship should it be operated? A good case has been made for the proposition that if American gambling is left in private hands, be it illegal or legalized, the crime syndicates will eventually take it over. In other countries this is clearly not the case. The aftermath of the British Pool Betting Act of 1954 showed that competition and publicity kept this activity from developing into a source of abnormally high profits for the promoters and thus deprived the criminal element of its only incentive to move into such an industry.

There is some irony in the fact that welfare-England solved this problem in the simple capitalistic manner but that it may well be too late for us to take this road.

Perhaps what we need is to be less rigid in our distrust of government-run businesses. The first item on the research agenda might be a study of the New Hampshire state lottery.

Once we feel free at least to consider the idea, we might also look to Europe, where some countries run two types of lotteries: One where a person merely buys a number or a share of one (as in the Irish Sweepstakes); and another, usually called the small lottery, where one bets very small amounts on special numbers being drawn, sometimes in adjacent positions (ambo, terno), quite similar to some of our policy wheel arrangements.

The solution must be to meet the demand for gambling somewhere and to satisfy it in such a manner that it remains domesticated without unnecessary social costs. That gambling too will have its pathological fringe is unavoidable, just as drinking and smoking have it. Modest gambling might not be the most desirable cultural pastime; but we could do, and have done, worse.

In spite of the failure of the book under review, gambling is ripe for serious study and, for once, well worth the risk.

HANS ZEISEL^{*}

THE STATES RIGHTS DEBATE: ANTIFEDERALISM AND THE CONSTITUTION. By Alpheus T. Mason. Englewood Cliffs, N.J.: Prentice-Hall, Inc. 1964. xiii + 206 pages. \$2.45.

The author is McCormick Professor of Jurisprudence at Princeton University and has been for many years a prolific writer in the areas of constitutional history and the work of the Supreme Court. The book under review was sparked by the three amendments to the United States Constitution proposed in 1962 by the Council of State Governments. One of these amendments would have created a "Court of the Union"—composed of the chief judges of the state supreme courts—with power to overrule the Supreme Court in cases involving federal-state relations. A second would have enabled the state legislatures to amend the Constitution without the intervention of Congress. The third would have overturned

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