

The Key to Sports Integrity in the United States: Legalized, Regulated Sports Betting

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Executive Summary

It's not often that a regulatory regime in the United States is compared with that in Russia or China, but American restrictions on sports betting much more closely resemble those nations than they do European nations.

As the U.S. law which outlaws sports betting – the Professional and Amateur Sports Protection Act (PASPA) – approaches its 25th anniversary, it's worth examining how it has failed to live up to its name and has not restricted the size of the thriving black market in illegal sports betting.

This paper examines:

- The significant extent to which Americans gamble on sports, despite it being illegal;
- The dangers to the integrity of sports posed by the current prohibition on legalized sports betting; and
- The regulatory and legislative framework needed to support a strong, legalized sports betting market in the United States that in turn will stifle black market opportunities.

Our research concluded – that far from being a detriment to the integrity of sports – legalized and regulated sports betting is in fact a necessary condition to preserve and protect the integrity of sports.

This conclusion was underpinned by the following findings:

Americans want to bet on sports and prohibition has largely failed as the restrictions are ignored.

Despite being illegal, betting on sports is a common and generally accepted activity for Americans. This is done casually through office pools or more seriously and systemically through illegal bookies or offshore gaming sites. In short, sports betting is taking place – on a significant scale – despite being illegal. In fact, the proportion of American adults who place illegal wagers on sports proves to be roughly the same as those betting legally in Great Britain.

Left unchecked, black market gambling in the United States has thrived. The United States and China represent the largest illegal sports betting markets in the world. By way of example, an illegal sports bookmaker who was prosecuted in New Jersey in the late 1990s had an annual volume of \$200 million, higher than the largest legal bookmaker in Las Vegas.

Law enforcement resources are already stretched thin and the connections between sports betting and more serious activity are in the early stages of being truly understood. In this atmosphere, illegal operators have largely been able to operate freely with little worry of prosecution and with no recourse for consumers in the event they are defrauded.

Moreover, rather than displacing street-level bookies, the internet has only fueled the U.S. illegal bookmaking sector, creating a more convenient, 24-hour-a-day experience for bettors and offering clients a wider range of services. Street-level bookies can still collect and place bets using online resources as well as make odds and spread their risk.

Illegal gambling threatens the integrity of sports.

Legalized and regulated sports betting brings with it transparency and oversight, both for sports book operators and customers. However, illegal sports betting has no such transparency or mechanisms available for tracking bets, making it an ideal venue in which to profit from the manipulation of sports. Cutting off the flow of funds into the illegal market is critical to removing the incentives for manipulation.

A legalized, regulated market would layer in consumer protections against the potential problems associated with sports betting, allowing these problems to be addressed and better controlled.

The problems PASPA sought to address, such as problem gambling and crimes associated with sports, such as match fixing and point shaving, can instead go unnoticed in an unregulated environment. By creating a legal regime, individuals are permitted, within limits, to engage in an enjoyable activity while consumer protections create transparency and accountability to address potential problems linked to sports betting.

America should look to nations with mature sports betting markets, like Great Britain, when adopting a legalized framework. To reap the benefits of a legal sports betting market, America must put in place a robust regulatory structure with appropriate controls. Keeping fixers' money and manipulation out of sports must be a collaborative effort that brings together the expertise of regulators, betting operators, police authorities and the governing bodies of sports. It is vital that a new, legal market is made attractive for consumers in order to ensure they move away from black market betting. Looking at the legislative mistakes made by some countries when legalizing sports betting will allow America to implement a strong framework at the start, and make it far less likely that it will have to amend weak or ineffective laws later on.

I – Introduction:

The Current Legal Status of Sports Betting

Wagering on the outcome of a single sports event is prohibited by law in the United States outside of Nevada. This situation is the result of a federal law passed in 1992, the *Professional and Amateur Sports Protection Act* (PASPA), which forbids states from permitting sports betting. It is true that it allowed exceptions for those states (four) which already offered some form of betting but, of these, only Nevada had legalized single event betting (as opposed to parlay or pools betting) and facilities for wagering on a wide variety of different sports. Thus, to this day, Nevada operators have an effective monopoly on legal sports betting in the United States and residents of other states are faced with prohibition.

Prohibition of sports betting is in fact common across much of the World. In Asia, nearly all countries forbid sports betting though some provide for exceptions. In China, the state-sanctioned Sports Lottery has stretched the definition of 'lottery' to allow it to sell sports bets, though they are limited for most sports to parlays (betting on outcomes of groups of games rather than single games) and the value-for-money for players is poor compared with illegal markets. In Hong Kong and Singapore, state-authorized monopolies offer soccer betting, though market share relative to the illegal market is similarly limited by relatively low pay-out rates to bettors. Curiously, pari mutuel or pools bets are available in Japan, but

only on 'racing' sports, cycling and motor racing as well as horses [Generally in this Report we do not categorize horse betting as part of sports betting because, nearly everywhere, it is treated differently in law from other sporting activities, with on-track betting common wherever horses are raced].

The most anomalous jurisdiction in Asia is the Special Economic Zone of Cagayan, Philippines. It issues gaming licenses and it is now the base for the largest (by turnover or the total amount of money wagered) bookmakers in the World, most notably SBO (Sports Bookie Online). It would be unfair to question the probity of these bookmakers in terms of the security of customers' money, but they operate under extremely light regulation and are able to suck up money from illegal markets all over Asia. Much of their business comes from illegal bookmakers, which manage their own risk by passing on illegal bets to agents who then aggregate bets from different sources and, finally, place these bundles of bets with the Cagayan operators. Though licensed and legal, the Philippines-based industry may therefore properly be understood as an adjunct to underground betting throughout East Asia and beyond rather than as a true exception to the widespread prohibition in the region. In fact, they are not permitted to accept bets from residents of the Philippines.

Despite the exceptions and anomalies, **Asia is in reality close to uniformly prohibitionist.** China and India are the largest markets and, except for the Chinese Sports Lottery, all sports betting activity in these markets takes place exclusively in the underground, illegal economy.

On the other hand, **similar to Australia and New Zealand, Europe is broadly permissive of sports betting,** albeit different countries offer different models for this regulating activity. Great Britain has one of the most liberal and competitive regimes with large numbers of operators providing betting services under the supervision of a well-staffed Gambling Commission. In much of continental Europe, betting was monopolized by state lotteries until quite recently, but there has been a trend towards a system of licensing private operators following pressure for reform from courts applying European competition law. Now nearly all European adults are free to place bets on sports legally and most often they can do so with a choice of provider.

Over time, technological change has of course confronted countries with the additional questions of whether and under what conditions to allow their residents to bet online, using computer, tablet or cell phone, as well as at traditional retail premises such as betting shops or other places offering an agency service for bookmakers. Some have so far dodged the questions and in these cases, such as Germany, the legal status of online betting remains unsettled, typically because it is not explicitly defined in or covered by pre-existing legislation. Again, jurisdictions may choose to allow domestic but not extra-territorial operators to supply betting services to their residents. In this latter case, as well as in totally prohibitionist states, jurisdictions may seek to enforce the restriction by blocking international betting websites or requiring financial institutions to prevent transfers of funds (for example, using credit cards) between bettors and their bookmakers.

So the legal position with regard to online sports betting is complicated. But, generally, countries fall in a similar place on the spectrum from restrictive to permissive as they do in the case of their stance towards more traditional bookmaking. Examples of (big) restrictive countries include China (permits only transactions with the Sports Lottery and seeks to block foreign betting websites), Russia (total prohibition of online and other remote gambling from 2006 to 2016; recently a limited number of licenses have been introduced, but with severe restrictions, and foreign websites have been blocked) and the United States (its Unlawful Gambling Enforcement Act, 2006 and The Wire Act, 1951 relied primarily on outlawing financial transactions associated with bets).

Less restrictive countries, where there is legal, regulated online sports betting available, may nevertheless take different stances on how bounded the right to bet or to provide betting services should be. In 2001, Australia signed into law the Interactive Gambling Act and permitted online sports betting but with the qualification that in-play betting (i.e. betting during the game) was not to be allowed. In France, online prohibition ended following the passage of Loi 2010-476, introduced as a result of pressure from the European Union, which interpreted prohibition as anti-competitive and designed to protect state-owned incumbents in the gambling industry. Its new regime permits foreign companies to obtain licenses to offer sports betting but subject to somewhat prescriptive regulation on matters such as the maximum pay-out percentages bookmakers can offer and the sports and competitions on which they can accept bets. In fact, individual sports federations and event organizers are entitled to veto betting on their matches and tournaments. In contrast, the framework set by British legislation (enacted in 2005 and 2014) allows for a freer market. Domestic or foreign

entities licensed by the Gambling Commission are permitted to market betting services to British residents. Licenses require ‘good behavior’ consistent with the objectives of the legislation; but there are no restrictions on the commercial freedom to decide which sports are available for betting and what pay-back rate to offer. Consequently, the market appears to be highly competitive and responsive to consumer preferences.

While it is easy to discern a clear difference between the tendency towards prohibition in Asia and North America and the greater tolerance of (or even enthusiasm for) sports betting in Europe and Australasia, it requires more probing to see what cultural differences separate out prohibitionist from permissive jurisdictions. Brett Abarbanel⁽¹⁾ used statistical analysis to relate countries’ choices on the availability of internet sports betting to their societal characteristics as captured by the set of cultural indicators identified by Geert Hofstede⁽²⁾ and widely used in social science research. She found that two indicators were statistically significant predictors of a country’s stance on internet sports betting. Societies which were ‘individualistic’ and societies which exhibited low ‘uncertainty avoidance’ were more likely to allow online sports betting.

In this context, the United States represents an anomaly in that, according to Hofstede’s measurements,⁽³⁾ it is the World’s most individualistic (as opposed to collectivist) society, and it also has a relatively low level of uncertainty avoidance.

The Trouble with Prohibition

Of course it is possible to argue against prohibition on philosophical grounds: adults should be free to make their own decisions on how to spend their leisure time and money. Perhaps the tendency for more individualistic societies to permit betting

reflects the power of this argument in that sort of culture. However, even if it were accepted that harm resulting from gambling justified an exception to the rule of freedom of choice, it would not follow that prohibition is the optimal policy for minimizing harm. This is because of the fundamental reality that, **in the sphere of betting, prohibition never seems to work.** Always and everywhere, it seems, betting takes place on a significant scale even where it has to do so outside the law. This can be illustrated by historical examples from countries which have shifted from prohibition in the past to legal betting today and by current examples from Asia and America of how ineffective prohibition continues to be.

Today, Great Britain has a very open and visible betting industry. There are more than 8,000 betting shops, a sufficient number in a relatively small country, where over-the-counter wagering on horses, dogs and dozens of sports is highly accessible in all but the most rural areas; and, wherever they live, adults are free to bet online with scores of licensed operators. But this was not always the case. Cash wagering other than at horse and dog tracks was legalized only in 1961. However, as Roger Munting noted in his authoritative History of Gambling in Britain and America, this did not mean that such betting began in 1961: “legislation did not create [the] market but simply made it legal and regulated”.⁽⁴⁾ He cited one (likely over-conservative) estimate from 1950 that some 6,000 underground bookmakers were active in Great Britain.

Fred Done is today one of the biggest bookmakers in Great Britain, with more than 1,300 shops across the country. His recollection of his father’s illegal business in industrial Manchester gives a flavor of how these 6,000 illegal bookmakers operated. The shop was “under a tarpaulin in a back yard. He would open the shop from 11 to three and from five to seven. Bets were written on any scrap of paper,

with a *nom de plume* on the back". It was not a small operation: "We had runners in all of the factories in Trafford Park, one of the biggest industrial complexes in Europe. We would send a taxi round every day, and the bets would be handed over in clock bags [leather bags which set the time when closed, confirming that the bets had been collected by the runner before the sports event began]".⁽⁵⁾

This evocative account illustrates that the industry in Britain was able to be highly organized despite the law. And the service it provided was highly popular, according to what the Royal Commission on Betting, Lotteries and Gaming reported in 1951. Its recommendations were informed by a Social Survey, which found that 11% of respondents had placed a bet with a bookmaker in the preceding week; 51% of men and 38% of women had bet on the preceding edition of The Derby, Britain's classic thoroughbred race.⁽⁶⁾ These figures indicate levels of participation in Great Britain which are actually much higher than those observed today, when betting is legal. This is consistent with the comment in the Royal Commission's Report that "so long as there is a demand for gambling facilities, the ingenuity of those who provide them and those who use them will find ways of circumventing legislation of a purely prohibitive character".⁽⁷⁾ It recommended an end to prohibition (though it took ten years before this was brought into effect).

In jurisdictions where betting is still prohibited, both the structure and scale of operations of illegal betting appear to be comparable with the historical experience of Great Britain. In America, as in Asia, illegal bookmakers have traditionally delivered services to very tightly defined neighborhoods and recruit and service clients through runners paid a commission. This structure is readily explained by the need for trust between the two parties to any illegal transaction since neither can seek the protection of

the law if they are cheated. Further, an illegal industry where large volumes of cash are moved around is vulnerable to theft and, to minimize the amount of cash transported, it is desirable to settle transactions only periodically and according to the net losses or gains of the bettor. This necessitates credit betting and, again, credit betting requires trust and close knowledge of each customer.

The size of an illegal betting market is impossible to quantify reliably because illegal businesses do not file official returns. However, there is little doubt that China and America represent the world's biggest illegal markets. A report from The Sorbonne University and the International Centre for Sport Security⁽⁸⁾ estimated that Chinese sports bettors lost approximately \$1.3 billion in the illegal market in 2011 and Americans' lost approximately \$1 billion. Americans' losses on illicit sports betting were slightly more than the amount that British bettors lost on sports betting at legal betting shops in the same year (approximately \$790 million at then current exchange rates).

Another study, the National Gambling Impact Study Commission's (NGISC) final report in 2001, quoted estimates on illegal sports wagering in America that were even larger than the Sorbonne's examination. The Commission actually cited a range of \$80 billion - \$380 billion in annual betting on sports (which would correspond to player losses of \$3.8 billion - \$18.1 billion). While these figures would have included betting between friends, in office pools and other wagering that takes place in legal grey areas, the remarkable size of the U.S. market is undeniable.

While any attempt to place a money value on the aggregate size of the illegal market must be treated with great caution given the inherent difficulty of estimation, there are other and more reliable indicators that **illegal sports betting in the United**

States operates with a volume that dwarfs the legal market in Nevada and attracts a significant proportion of the population to participate.

Koleman Strumpf⁽¹⁰⁾ used freedom of information rights to obtain police and court records relating to cases of six neighborhood sports bookmakers prosecuted in New Jersey in the late 1990s. Documents seized had included the books of the bookmakers, which enabled precise identification of the scale of their businesses. One of these recorded an annual volume of \$200 million, more than the largest bookmaker in Las Vegas and indeed about 10% of the volume for the whole of Nevada's legal market. Since he was only one bookmaker active in only one neighborhood of one state, this finding alone testifies to the substantial size of underground sports betting in America at that time.

It is worth noting Strumpf's work covered the period just before the penetration of the internet made online betting available to the majority of the American population. Today, of course, despite legal restrictions on processing financial transactions between bettors and online bookmakers based offshore, many Americans do find a way to bet on sports in this way, a modern means of evading prohibition. The Sorbonne Report⁽⁸⁾ estimated that U.S. residents lost 200m euros (nearly \$300 million) in online sports betting in 2011. The Report does not set out how this figure was calculated. However, that the number is indeed likely to be very large, perhaps larger than the Report suggested, is supported by the number of visits by American residents to offshore gambling sites, as recorded by independent companies which monitor internet traffic. Further, prosecutions of illegal American betting rings where the bets had ultimately been placed offshore have featured extremely large cash seizures.⁽¹¹⁾ One betting ring successfully prosecuted in Texas in 2013 was found to have

handled bets totaling \$5 billion. It had coordinated a network of agents across the country with the bets finally channelled through licensed but effectively unregulated operators based in Curaçao.

Given the amount of online business transacted, which supports an America-facing industry in several regional jurisdictions such as Costa Rica, Panama and Curaçao, it might be thought that the street bookmaking industry would be withering away. But this is far from the case. In fact, the internet has allowed the domestic illegal bookmaking sector to evolve and become more streamlined and able to offer a wider range of services to clients than ever before. First, it enables improved risk management for bookmakers because they can more readily offset some of their potential liabilities to winning bettors by "hedging" – placing corresponding bets via offshore sites. Second, they can outsource through firms located offshore to offer superior servicing of client accounts. For example, realbookies.com is a company based in Costa Rica which is one of many offering a so-called 'pay per head' service. A bookmaker can provide each of his clients with a telephone number or website address and password where he can wager. The offshore call center will answer the phone 24 hours per day to record a bet or the client's bet will be accepted online by automated software. The bookmaker can supply his own odds or use international market odds on an event and the latter allows his clients to wager in-play. Thus part of the bookmaker operation is outsourced; but, once he retrieves the record of his clients' bets, the collection of stakes and distribution of winnings are carried out in the traditional way. Thus the American 'street bookmaker' industry, claimed by the Sorbonne Report⁽⁸⁾ to be second in size only to China, has modernized and remains important. Its clients can take advantage of new styles of betting but avoid the obstacles and risks

associated with paying into an account with an offshore sports book; and, in contrast to online operations, local illegal outfits accept bets on credit.

Wherever they bet, the proportion of American adults who wager on sports (not including horse racing) proves to be about the same as in Britain: 10% according to a 2016 Gallup Poll in America⁽¹³⁾ versus 12% according to the last British Gambling Prevalence Survey.⁽¹⁴⁾ This is despite the very different legal status of betting in the two countries. In each case of course, the figure for participation as a proportion of sports fans rather than of all adults would be much higher.

When economists are unable to measure precisely the size and scope of an activity in the underground economy, they commonly look for evidence in markets for associated but legal products. Stephen Salaga and Scott Tainsky⁽¹⁵⁾ analyzed the evolution of Nielsen Ratings for college football games over five seasons. They found a strong tendency for one-sided games to retain the television audience when the score was close relative to the betting spread (i.e. the game was dead as a sporting contest but the betting outcome was not yet decided). Similarly, ratings were lower for games where the number of points scored went over the number quoted by betting houses in the over/under market so that the outcomes of all bets in that market had been decided. That such statistically significant patterns were identified suggests that a sizeable part of the viewership was interested in their betting outcomes and demonstrates just how many Americans are betting on sports even though they have to bet at illegal bookmakers or on unregulated offshore websites.

Sports betting, then, is clearly a significant industry. **Experience in prohibition Era Great Britain and in contemporary China and America illustrates that betting will take place whether or not it is**

legal. The failure of legislation anywhere to deter sports betting likely has many explanations. The structure of the traditional industry is that it is highly decentralized such that there are so many points of sale that police resources could not find or close them all. The online industry is physically difficult to stamp out since operators can be fleet of foot in changing web addresses; and product innovation provides new ways of evading restrictions on transfer of money. Additionally, the ‘crime’ is for a willing buyer to contract with a willing seller and so it is unlikely often to be reported to the police. Law enforcement seldom gives suppression of illegal wagering much priority as penalties are low, public perception is that the sector poses little genuine risk, and any vacuum in the market following convictions is likely soon to be filled.

Whatever the detailed reasons, the reality to be faced is that **sports betting will take place, and on a significant scale, whether illegally as in countries like America, India and China or legally as in countries like Australia, Great Britain and France.**

The policy question we address is whether problems traditionally associated with betting are likely to be controlled more effectively if the activity takes place in illegal, unregulated markets or legal, regulated markets.

Our focus on “legal and regulated” reflects the fact that legalization of any gambling sector without first establishing a regulatory framework has never had a favorable outcome. For example, in both Nevada and Great Britain, legalization of casinos without supervision by an external agency resulted in operation of facilities by organized crime and provided those criminals with an open forum in which to pursue their nefarious activities. In each of these jurisdictions, the state eventually had to re-legislate and allow for an appropriate system of licensing and supervision of operations. In both

places the industry developed subsequently to be dominated by large public companies with every incentive to keep the sector crime-free.

In the case of bookmaking in Great Britain, large numbers of licenses were issued after legalization as underground bookmakers applied to become legal. But here also, from the natural evolution of the market, the long-run trend was towards dominance by public companies. Many independent one-shop bookmakers survive today, but nevertheless the industry has become highly concentrated such that 87% of shops are now owned by just four operators,⁽¹⁶⁾ all of which are large public companies. This adds another layer of governance whose internal regulations and codes of practice enhance protection against criminal infiltration.

‘Illegal’ versus ‘Legal and Regulated’

The policy issue to be addressed, then, is whether the public’s demand to bet on sporting events should be met in an illegal (but impossible to suppress) sector or by a licensed industry subject to regulation.

The choice requires asking in which setting the potential problems associated with sports betting can be better controlled. We identify the potential problems as including:

- Problem gambling – Some sports bettors lose control of their play and there may be severe consequences for these bettors and their families.
- Crime – Bookmaking involves substantial flows of money, and this may attract crime. For example, bookmakers may be the victims of theft or protection rackets or they may be criminals themselves who use their betting business to commit fraud.

- Match fixing – Sports matches may be manipulated to enable profits to be made on the betting market.

In the next chapter, which asks **why sports betting should be legalized**, we set out the reasons for believing that each of these problems would be mitigated if Americans could bet on sports in a legal regulated environment. We cover other arguments too, such as the relative degrees of protection afforded consumers and the potential for governments to generate revenue.

In chapter III, we ask **how sports betting should be legalized** (in terms of regulatory structure). Here, we draw especially on the experience of Great Britain and focus on the institutional arrangements it has in place to ensure that betting-related threats to the integrity of sports are minimized.

Although other societal issues associated with sports betting will be addressed, our principal focus will be on the integrity of sports. This is deliberate. America made a distinctive policy choice compared with Europe when Congress enacted the *Professional and Amateur Sports Protection Act* in 1992 and thereby prevented states from introducing new, legal sports betting markets. The explicit rationale for this policy was proclaimed in the name of the Act itself. It was to protect sports from corruption. We will examine whether this purpose is in fact achieved by prohibition and suggest that sports would be better protected if betting took place in a legal, regulated environment.

Finally, in chapter IV, we consider policy choices which might impact the extent to which “legalization and regulation” would succeed in achieving its goals, above all that of protecting the integrity of sports. We call this chapter **Getting the Product Right**.

II – Why ‘Legalize and Regulate’ Sports Betting?

Overview

Watching and following sports on the one hand and wagering on sports on the other have long gone together as complementary activities. Sports fans can intensify the suspense and excitement they derive from sports by betting, thereby making themselves stakeholders in the outcome of a match even if the team they support is not playing. They can also test their knowledge and understanding of sports by pitting their wits against bookmakers in the betting market (and indeed the success of fantasy sports in the United States reflects the enthusiasm of sports fans to find outlets where their expertise can be tested). So some, in fact many, sports fans will always seek to enhance their experience by betting (commercially or with friends or colleagues in office pools).

Given the increased popularity of professional sports in America and elsewhere, it is plausible that the demand for commercial betting has further to grow. And, in the first chapter, we illustrated the reality that, if the demand for betting grows, the amount of betting will grow whether this takes place in a legal environment or in an underground economy.

Any illegal market is characterized by secrecy. Its lack of transparency and accountability leaves no one answerable for social ills, such as, in the case of sports betting, the exploitation of vulnerable

individuals or the violation of the integrity of sports. Opting simply to declare sports betting illegal is a binary policy choice which takes away the possibilities offered in the more nuanced “legalize and regulate” approach where individuals are permitted within limits, to do what they want to do but with independent control over the activity to address specific, potential problems.

Specific Advantages of a Legal, Regulated Market:

A legal, regulated market better protects the vulnerable.

As with other forms of gambling, a proportion of sports bettors will suffer from *gambling disorder*, an illness recognized by the American Psychiatric Association. These ‘problem gamblers’ engage in self-harming activity such that the excessive amounts of time and/or money they spend on gambling leads to disruption of their lives including outcomes such as family breakdown and loss of employment. Prevalence surveys⁽¹³⁾ suggest that the proportion of regular sports players who suffer from a gambling disorder is similar to, say, the proportion of regular slots players who suffer from a gambling disorder. A legal, regulated industry is certainly far better positioned to mitigate the harms associated with gambling for this part of the population compared to an underground illegal one.

In the illegal market, bookmakers have no incentive to address the problems of clients whose gambling is harmful to their health. Indeed, they have every incentive to do the opposite. In a legal and regulated market by contrast, a framework for minimizing harm can be put in place, and operators will be accountable to an independent regulator. While operators and regulators may not immediately agree on what every element of a program that promotes consumer protections should entail, ultimately an operator is likely to comply in the adoption of responsible gambling measures because its license depends on it. Indeed, in Great Britain, named individuals in a betting house are *personally* responsible for issues such as prevention of under-age gambling and can lose their right to be employed in the industry if they fail to ensure that proper practices are followed. This is an example of how establishing a legal framework for betting enables the introduction of personal and corporate responsibility for taking into account problems associated with betting.

In a legal regulated betting market, specific conditions are imposed on betting operators. Invariably these will include rules on the minimum age for betting (which can be enforced effectively given refinement of age verification technology over the last decade). They will also include requirements for educating customers as to the risks of betting and for providing information on sources of help for those with problems. Especially in online betting, there is increasingly a tendency for regulators also to insist on measures to monitor client activity to identify patterns of betting which suggest potentially problematic play, with appropriate interventions mandated to follow. And, both offline and online, many regulators internationally are introducing requirements for self-exclusion schemes and the ability for bettors to set limits on how much they can lose.

Since problem gamblers often have an unhealthy and irrational draw to gambling (whether sports betting or other forms of wagering), they are more likely than other recreational bettors to turn to the illegal market if there is no more easily accessible option. In entirely illegal markets, there will be no responsible gambling features at all. It is true that, where Americans succeed in betting online, they will do so in a relatively protected environment if they use international operators based in offshore European gambling hubs such as Gibraltar or Alderney. Regulators there impose license conditions similar to those in larger countries with legal markets. But in other jurisdictions, including those which actively seek to recruit American clients, control is laxer and there may be no formal rules at all. It would therefore seem very likely that there would be a social gain were problem and potential problem gamblers to wager in a well-regulated domestic online market where the degree of protection was in the hands of accountable public officials.

A legal, regulated market offers superior consumer protection.

It is probably fairly rare for illegal bookmakers to fail to pay out winnings since no bookmaking business would be sustainable if word spread (as it can rapidly in the online world) that it was fraudulent. Nevertheless, lax offshore jurisdictions have been used for hit-and-run operations where a betting website opens up for a short time before absconding with clients' money. Fraudulent websites may even be created where there is no license at all but where it is claimed that they are regulated. It is hard for bettors to know which international websites among thousands are legitimate and they are therefore vulnerable to such fraud.

And of course a betting house may simply fail, perhaps because of reckless business practices, putting client monies in jeopardy. In an early case in 2006, BetOnSports, based in Costa Rica, collapsed and customers lost \$16m held in their accounts or as unpaid winnings.⁽¹⁷⁾ Similar to other financial services, a well-regulated jurisdiction such as one would expect in an American setting would protect customers through such audited requirements as maintenance of minimum cash reserves or the keeping of clients' money in a separate account from that of the business. A national or state portal would also be more familiar to bettors, avoiding the need for them to assess which websites might be fraudulent.

More common than outright fraud are disputes between bookmakers and clients, often based on implicitly unfair and unread terms and conditions. Such disputes are unlikely to be resolved in a fair and consistent fashion where an activity is illegal and neither party has ultimate recourse to the courts. By contrast, in a regulated betting industry, the Commission responsible for the sector will in most cases provide a mechanism for receiving and investigating complaints. It will also impose a license condition that terms and conditions are fair.

A legal, regulated market prevents abuse by organized crime.

Traditional street bookmaking does not have as close an association with organized crime as many other illegal activities. Reuter and Rubenstein investigated illegal bookmaking in New York City in the 1970s in cooperation with prosecutors and the police department. Their general conclusion was that "bookmaking organizations are anonymous, autonomous, localized, highly competitive, and do not form part of a larger criminal network. Violence does not play a part in bookmaking".⁽¹⁸⁾ Similarly, the six New Jersey bookmaking businesses investigated

by Strumpf⁽¹⁰⁾ in the late 1990s appeared not to be involved in any crime beyond of course that of offering an illegal service to bettors. Typically, these bookmakers were former successful bettors. Presumably they switched from the demand to the supply side of the market because it is hard for a proven knowledgeable bettor to find a bookmaker willing to take his custom.

The situation in the contemporary era is perhaps less benign as illegal wagering shifts towards online activity. Recent criminal cases in the United States have featured betting rings which gather bets from domestic and foreign bettors and process them offshore.⁽¹²⁾ Such operations require a high level of sophistication both technologically and in the shifting of large sums of money across state and national boundaries. Only organized crime is likely to have the resources to set up and manage such an enterprise. By forcing bettors to resort to use of such services, prohibition provides an additional sector which organized crime can add to its portfolio of activities. If Americans were betting instead on regulated sites in the United States, oversight would ensure that those with criminal association were not able to enter the industry. Regulation of American casinos provides a natural template for how to achieve this goal.

A legal, regulated market extends the tax base of governments.

Outside Nevada, most Americans' betting on sports is channeled into either the underground economy or the offshore industry. This expenditure generates income for individuals and companies, but that income is not subject to state and federal income and business taxes. As throughout the underground economy, the tax base available to governments is narrowed because income is not recorded or reported. Ultimately, as a result of

activity taking place underground, either taxes in the legal economy will be higher than otherwise or expenditure on public services will be lower.

In addition to gaining revenue from a legal betting sector through ordinary income and business taxes, governments may also seek to impose additional gambling-specific taxes. Many jurisdictions impose a percentage tax on gross gaming yield (which is the amount lost by bettors). In Great Britain, the rate is set at 15%. In 2015, revenue from the tax levied on land betting was £378m (\$529 million at 2015 exchange rates). The tax on online gaming generated further revenue of £250m (\$350 million), though this latter figure relates to all forms of remote gambling, not just betting.⁽¹⁹⁾

The Integrity of Sport

As noted above, the *Professional and Amateur Sports Protection Act* of 1992 outlawed almost all forms of sports betting in the United States outside Nevada and three other states. From the title of the Act, the explicit intention of legislators was to protect sports. But whether forcing betting on events to take place in illegal settings is in fact protective of sports is open to question.

At its core, protecting sports means preventing manipulation of events on the field of play, which can enable criminals to win money on betting markets. The execution of the fix will normally be by players or officials taking part in the sporting contest. The instigators of the fix may be either those same players or officials (seeking personal gain by betting themselves or through proxies) or external parties who persuade players or officials to take part through financial inducement or, less commonly, through coercion.

It is a well-established tenet of economics that the prevalence of any financial crime will be positively related to the prospective amount of money to be made and negatively related to the probability of being caught and punished. In this context, what characteristics of a betting market would provide an environment most conducive to fixing?

First, fixers will be encouraged by high liquidity in a betting market. Liquidity is a term from finance where a market is defined as liquid if it is possible to make substantial transactions (for example in a stock) without driving the price against the trader. Similarly, in the betting market, liquidity refers to the extent to which a bettor can place a large wager without shifting lines or spreads in a direction which will erode any winnings.

In a 'thin' or 'illiquid' market, large bets will be conspicuous and bookmakers may be reluctant to accept them because risk cannot be managed easily when little money is being wagered on the opposite result. But in a 'liquid' market, where the volume of betting is large, substantial bets can be placed without attracting undue attention and without bookmakers making significant changes to the betting line. Thus, **the more liquid the betting market, the greater the size of bet that can be placed and the greater the profit to be made from organizing a fix.**

The second requirement for fixers is that the market be safe to use from their perspective. They want the probability of detection to be low and, if a fix does come to light, they want it to be difficult for the crime to be traced back to themselves. These are the very conditions likely to be present in an illegal and therefore unregulated market. There, betting transactions are secret and not open to monitoring which might identify suspicious patterns in betting activity. And, even if a fix comes to light, for example

by ‘whistle blowing’ within the sport, it is unlikely to be traced back to its source.

In August 2016, the United Nations Office on Drugs and Crime published a manual⁽²⁰⁾ to guide police undertaking match fixing investigations. It noted that **“it is more difficult to investigate allegations of match fixing where betting is illegal** because investigators are unable to work closely with betting operators and do not have access to crucial evidence directly related to fixes” such as who placed the bets. By contrast, “in other countries such as Australia, Ireland and Great Britain, where legal betting markets are well-regulated, tackling match fixing has been quite successful, in large part due to easier access to betting evidence”.

Thus, the demand from criminals to organize fixes is likely to be greatest where the betting associated with the sporting events takes place in high volume, unregulated markets. This is the most dangerous situation for sports, particularly where athletes and officials taking part in the event are poorly paid and therefore more open to bribes. Prohibition of course delivers all of the liquidity provided by recreational bettors into a completely unregulated market where that ‘recreational’ money then serves as camouflage for the activities of criminals.

Legalization with effective regulation may therefore be argued to work by deterring criminal exploitation through shifting liquidity out of the unregulated sector.

This is because most people may be presumed to prefer to act within rather than outside the law. Therefore, so long as the legal sector supplies an attractive product, most recreational bettors are likely to take their money there. Much of the criminal money will not follow because there is a strong chance that effective regulation will catch those betting with nefarious intent. But criminals constrained still to

operate in the unregulated sector will not now be able to make as much profit as before because liquidity has reduced. Therefore, the threat to sport would be expected to diminish.

The legalization of betting in Great Britain in 1961 seems to have had just this effect. Declan Hill⁽²¹⁾ noted that, while a narrative has emerged of extensive match fixing in English soccer in the 1950s, there is no evidence that this continued into the 1960s. He reflected that part of the explanation was that an illegal betting market was supplanted by a new legal sector. We would expect this to result in less corruption in sport even though many of the bookmakers were actually the same individuals who had operated in the illegal market. Now they had a license to protect, and now of course they had the right to complain to the police if they suspected that they were being cheated, whereas before, as illegals, they had no access to law and law enforcement.

Protecting Sports in a Regulated Betting Market

In a well-regulated market, there will be effective monitoring of bets to detect instances of possible match fixing. Regulators will require it of operators as a condition of doing business and it is of course prudent for these operators as part of their risk management. In Western European countries, information on bets placed, whether at retail outlets or online, are recorded digitally, and algorithms applied in real time will alert a dedicated team in circumstances such as: (i) there has been an unusually high volume of betting relative to the norm for the particular league or tournament, (ii) there has been an unusual proportion of bets against the favorite, (iii) there has been a geographical concentration of bets and (iv) bets have been placed online using different accounts but the same IP address.

Online it is possible to identify who has placed the bets and, in some countries, this is even possible in the apparently anonymous setting of the betting shop where high resolution images of each customer are recorded as a bet is placed.

In these systems, alerts that betting patterns are 'suspicious' are generated relatively frequently but many are found upon investigation to have alternative explanations from that of match fixing. For example, heavy betting in one particular area may be found to have been generated by the activities of a tipster. But several true cases of fixing have been successfully identified and prosecuted through this surveillance of betting in legal markets. A notable case in France implicated one of the country's sporting heroes who was subsequently found guilty of taking part in the fixing of a handball match, an important spectator sport in that country. The investigation was triggered by an alert which reported heavy betting against Montpellier in betting offices in Montpellier itself. It transpired that this was a fix instigated by players themselves for their own financial gain on betting markets. It was the last match of the season and they were said to have been planning a luxurious holiday.⁽²²⁾

More sophisticated fixers may seek to avoid detection by spreading their bets across a number of betting operators. However, where these are license holders, there is the possibility that they will share information. For example, one operator may observe moderately elevated betting on one event and will notify other operators in case there is a general pattern. Several online European operators licensed in offshore jurisdictions combine formally in this way through the European Sports Security Association (ESSA) and state-owned European operators have a similar scheme. These systems have also succeeded in identifying when fixes have occurred and perhaps provide a model for a legal market where betting is organized separately across states.

It might be wondered whether active screening for manipulation of events is exclusively the preserve of legal operators. Will not illegals also seek to protect themselves from losing money to fraudsters? In fact, there are a number of reasons to expect that only in legal markets will there be effective deterrence against fixing. Legal operators are commonly obliged to report suspicious betting activity. By definition, an illegal operator does not have anyone to whom to report. Worse, an illegal bookmaker may continue to accept bets from a client they believe is involved in fixing, particularly in the online era, to gain information from which the bookmaker can profit (in a sense, joining in the fix). Such behavior is inherently less likely in a licensed firm because its behavior is more transparent and it is accountable to public officials, and perhaps shareholders, for its actions.

Global Markets

Measures such as those described, operated within a framework of institutional arrangements such as we describe in Chapter III below, have a demonstrable record of keeping national betting markets from being used by those who seek to manipulate sporting events. Mainly they will catch unsophisticated fixers such as players betting on their own matches, which they plan to lose or else to win by a lower margin than betting houses expect. But, if there is a global betting market on domestic matches, sports can still not be fully protected. Sophisticated criminals will place their bets in unregulated markets where there is adequate liquidity and no possibility of their betting histories being revealed to investigators.

Among team sports, cricket and soccer have been very prone to serious fixing scandals in the last ten years. Sometimes these have been on a remarkable scale. A criminal ring based in Germany was found to have fixed more than 300 soccer matches in twelve

European countries plus Canada. In legal proceedings ongoing in Singapore, an individual has been alleged to have fixed 600 games worldwide. Investigators have found that almost all the criminal bets in such cases have been placed on Asian markets where there is no regulation and where liquidity is extremely high owing to the extraordinary enthusiasm for cricket in South Asia and for soccer in East Asia. Thus matches in, for example, European jurisdictions are corrupted but the fix may not be detected because the associated criminal bets do not pass through the operators licensed in those jurisdictions.

The most popular American team sports typically generate less betting interest internationally compared with cricket and (especially) soccer. However, American sports are at risk of being increasingly a target for fixers in the future. As American sports, notably basketball and football, seek to win new armies of fans in Asia, interest there will grow. Those who, for example, start to watch American sports on television will want to bet on it and thus the liquidity in unregulated Asian betting markets on American sports will increase. This will raise integrity risk. A parallel is that cases of corruption have come to light in English professional cricket since matches began to be televised to India. Instigators of these fixes were based in India and planning to profit from betting on illegal Indian betting markets.

In this globalized world, is domestic betting regulation really of consequence? We believe that it is. Even where criminals evade the scrutiny of local regulation by placing their bets in unregulated international markets, there are still likely to be echoes of unusual betting activity in the country where the sports event is played. First, the fix must be executed locally by players or officials. Information about the fix will therefore be present in the domestic jurisdiction and those holding it

will often not be able to resist making additional money from their knowledge. Indeed, their bets will be observed. Second, as in any global market, professional bettors and bookmakers will engage in hedging and arbitrage activities and some irregularity in the domestic market is therefore likely to be observed if there is a burst of activity in international markets. Thus allowing a regulated market to operate within a jurisdiction may lead to identification of possible instances of fixing in local sports even where the principals in the fix are not using local, legal markets.

Above all, any large country which provides a domestic outlet for betting makes a contribution to the security of sports worldwide because it removes a proportion of liquidity from the international market. This makes the potential profits from fixing lower and, on the margin, this should reduce the prevalence of fixing. In soccer, Americans make a non-trivial contribution to international liquidity when they bet on European games through offshore sites where fixers can safely operate. In sports which are particularly associated with America, the proportion of global liquidity accounted for by Americans is likely of course to be much higher. Keeping that money on a domestic regulated market where fixers would be deterred from operating would erode potential profits of fixers placing their bets elsewhere. This would help protect American sports.

We have set down the potential gains from establishing legal and regulated sports betting markets in the United States. We have explained why legalization would be likely to achieve a number of goals including better protection for sports. But, as with any reform, achieving the goals depends on getting the details right. Potentially the United States will be able to provide more effective regulation than anywhere else because it has the opportunity

to observe how countries in Europe and Australasia have legalized online or offline betting and what the strengths and weaknesses of their various approaches to regulation have been. America can also benefit from the evolution of regulatory controls observed in Europe where, for example, there has been improvement over time on issues such as how to enforce age verification and how to detect instances of manipulation.

In Chapter III, we offer ideas on what an effective structure of regulation might look like, with special reference to the model from Great Britain. In Chapter IV, we comment on policies relevant to the intermediate goal of getting Americans to switch from illegal and offshore providers to a new domestic and legal betting sector. The advantages of legalization will only be realized if there is indeed a shift of liquidity into new, legal markets.

III – How to Legalize Sports Betting

Getting the Details Right

If America is to secure the benefits associated with a legal market, it is important that an appropriate regulatory structure is put in place with appropriate controls. In a report from Harvard arguing the case for the United States to legalize and regulate online gambling, Malcolm K. Sparrow⁽²³⁾ argued that the experience of most American states in regulating casinos and other commercial gambling gave policymakers “extensive precedent from which to draw strategies to mitigate the potential social harms of gambling”. For more specific guidance tailored to online gambling in particular, jurisdictions in Europe and Australasia provide templates which have evolved from experience over several years. For example, we regard it as vital that legal online sportsbooks in the United States be strictly regulated to ensure best practice in terms of protecting problem and potential problem gamblers. The European Commission has recommended guidelines⁽²⁴⁾ for EU member states over the policies online gambling websites should be obliged to follow to protect the vulnerable. These are rigorous and would be a starting point for regulators in America.

Institutional Structure

As in Chapter II above, our principal concern here is how to protect sports. In some other areas, the onus

for ensuring that social concerns are addressed falls perhaps primarily on the regulator, which can require betting operators to comply in meeting minimum social responsibility standards. However, when it comes to protecting the integrity of sports, collaboration between a wide range of actors is needed if objectives are to be met. Thus, sport is the sector whose employees execute fixes. Regulators are ultimately responsible for the safety of the betting markets where those who instigate fixes can make their profits. Betting operators, for their part, have the detailed information on the betting market which allows actual or attempted fixes to be detected and investigated. Finally, police authorities possess the investigative powers which might make it possible to bring those who instigate or execute fixes to account.

All these actors must play their part and **each must be willing to collaborate with the others if success is to be achieved in keeping fixers’ money out of regulated betting markets and in keeping sports free of manipulation:** they must share intelligence, they must cooperate in investigations; and they must continually share best practices.

The necessity for collaboration is recognized in the Council of Europe Convention on the Manipulation of Sports Competitions, adopted in 2014 and signed now by nearly thirty countries.⁽²⁵⁾ Article 13 requires each country to set up a national platform

of relevant actors. It should serve as an information hub, collect and disseminate relevant information, co-ordinate the fight against manipulation, receive, centralize and analyze information on irregular and suspicious bets placed on events taking place within the country, report possible infringements of laws or sports regulations to public authorities or to sports organizations and betting operators, and cooperate at international level where there are trans-national dimensions to a fix.

In Great Britain, the evolution of structures to facilitate and encourage collaboration predated the Council of Europe Convention. In the rest of this Chapter we use our first-hand knowledge to explain how the British system has evolved and how it works.

Protecting Sports in Great Britain

The sports betting market in Great Britain is both mature and liberal. It has developed over fifty years and operates with minimal interference. There is no state owned competitor for the many privately owned bookmakers, and there is no barrier to foreign companies offering their services. Over the last decade changes in technology, in particular the internet, have seen an explosion in the types of bets offered, an increase in the popularity of in-play betting, and a break-down of geographical boundaries. British bookmakers are used by an international clientele, and British residents can bet with overseas operators. There are now betting exchanges where bettors are able to 'lay', i.e. just like bookmakers, they can wager that an event will not take place, for example that a horse will lose. All these developments have heightened the awareness of risks to sports integrity.

And there have certainly been challenges in recent years. There have been well publicized match fixing

cases in soccer, cricket, snooker and horse racing. A failed criminal prosecution of four jockeys led to an independent review of the regulatory and integrity procedures in horse racing under the guidance of Dame Elizabeth Neville. This resulted in the creation of a new independent authority, The British Horseracing Authority in 2007. In 2011, three Pakistani cricketers were jailed for spot fixing, although this was the direct result of a newspaper sting and there is no evidence that any bets were placed. Other cases have been investigated carefully and lessons drawn and policy modified. But these cases have been exceptional and the overall incidence of fixing cases has been very low compared with countries in Continental Europe. No cases have been identified or even suspected in the English Premier League, the only comparable league with Major League Sports in the United States. In part this is because there is virtually no illegal betting in Great Britain (the Sorbonne Report⁽⁸⁾ estimated that more than 99% of betting in Great Britain was in legal markets). And in part it is because the risks have been recognized and appropriate steps taken to combat them. Thus, since Great Britain's Gambling Act (2005), new steps have been taken in response to integrity threats, notably the setting up of The Sports Betting Integrity Panel (2009) and new legislation extending regulatory reach to offshore sites, The Gambling (Licensing and Advertising) Act 2014.

The Gambling Act (2005)⁽²⁶⁾

Great Britain's Gambling Act (2005) embraced relatively simple and logical core ideas to provide, for the first time, a common regulatory framework for all gambling activities. It is only a decade old, so it does address current issues and has proven robust to encompassing issues surrounding online betting. In essence it seeks to regulate gambling, including offline and online sports betting, via a licensing system operated by The Gambling Commission ("The Commission").

The licensing objectives, set out at the very start of the text which makes up the Act, are to:

- prevent gambling being a source of crime;
- ensure gambling is conducted in a fair and honest way;
- protect children and other vulnerable people.

These three overriding objectives have since been imitated in the legislation of other countries, such as Denmark.

The Gambling Commission

The Commission is an independent, public body corporate sponsored by the Department for Culture, Media and Sport (“the DCMS”). Based in Birmingham, it employs over 250 people and is funded by operators’ license fees fixed by the Government. The Commission, while being fully accountable, operates with considerable autonomy which means it can respond to the rapidly changing nature of the gambling industry without having to refer back to Parliament. It is able to move quickly, principally by changing the terms of gambling licenses.

Every betting operator requires a license. The Commission has the power to attach conditions to licenses. These may be general conditions applying to every license or individual conditions. Operators are obliged to adhere to the Licence Conditions and Codes of Practice. These cover such as the nature of the licensed activities, the circumstances in which the activities are carried out and the circumstances of the licensee. They may impose financial conditions on licensees, they may restrict the way in which services are advertised or they may restrict the means of communication used in relation to remote gambling (essentially gambling carried out by telephone or online rather than in fixed premises). Conditions may also make provisions for licensees to establish and record the identity of bettors.

Of particular relevance to sports betting is Licence Condition 15.1 which is specified in the Act. This essentially states that licensees must provide the Commission with information that they know or suspect may relate to the committing of an offence under the Act and provide the sports governing bodies (“SGB’s”) with information that they suspect may relate to a breach of the rules of the relevant SGB. In practice, this means that bookmakers supply details of suspicious, irregular or unusual betting activity to the Commission and to SGB’s. This is an important, and powerful, provision. Given that much of the information is available in real time, SGB’s are able not only to carry out retrospective investigations but also to be proactive in taking disruptive action.

The Commission has wide ranging regulatory powers in relation to Operating Licenses and may:

- issue warnings to licensees;
- attach additional conditions to a license;
- suspend or revoke a license;
- impose a financial penalty.

In addition to its licensing role, the Commission’s functions include compliance, enforcement, investigation and prosecution. It has wide ranging powers of inquiry. Licensees must supply information that the Commission requests and enforcement officers appointed by the Commission may enter premises, apply for search warrants, take copies of records and question people. These powers are not as extensive as those of the police; they don’t extend to bank records, for example, but they are stronger than for most public bodies.

The Commission also has the power to void bets when it considers that a bet is “substantially unfair”. This means that any money paid by way of stake or winnings must be repaid. This is a powerful tool as it can be applied relatively quickly and it is another form of disruption.

The Commission is required to advise the DCMS on the manner in which gambling is carried out, the effects of gambling and the regulation of gambling. It publishes position papers and advice notes from time to time.

Of particular interest are two it published in 2009 on Betting Integrity and In-Running Betting (the latter defined as betting while an event is taking place and mainly transacted online; in this paper, and commonly, it is referred to as in-play betting).

At that stage the Commission:

- Was taking an interest in SGB's rule books and trying to encourage them to share best practices with each other.
- Recognized the need to secure greater consistency in the reporting of "suspicious activity" under Licence Condition 15.1.
- Recognized that it had the power to restrict the types of bets offered and to prevent betting on a sport whose rules were inadequate but was not persuaded that either step was necessary or likely to be effective.
- Recognized that it had powers of investigation and prosecution but envisaged handing most criminal investigations to the police who had greater powers of inquiry and greater experience of complex investigations.
- Recognized that in-play betting presented two potential issues – a risk that the integrity of betting and sports could be compromised and a risk to the fairness of betting through the use of technology to gain an advantage (such as timing differences). However, the Commission had seen no evidence of an increase in match fixing or the misuse of inside information and did not believe that any special measures were required. This position was maintained in a new position paper on in-play betting issued in September, 2016.

Cheating at Gambling

The Act created the new criminal offence of 'cheating at gambling'. The maximum punishment is two years' imprisonment. There is no definition of cheating. Of course, while cheating could describe a wide variety of behaviors while gambling, fixing a sports match unambiguously falls within the scope of this provision. This adds a new instrument to be used against individuals who might be found to have manipulated sports for betting gain.

The Sports Betting Integrity Panel

In the summer of 2009 the Minister for Sport, Gerry Sutcliffe, established the Sports Betting Integrity Panel ("the Panel"). Recognizing that Great Britain was approaching a Decade of Sport during which a succession of world class events, starting with the 2012 Olympic Games, would be hosted, he was keen to ensure that all possible steps were being taken to combat match fixing.

The Panel comprised representatives of SGB's, betting operators, the Gambling Commission and the police. Its brief was to report within six months, which it did in February, 2010,⁽²⁷⁾ and to produce recommendations which were practical, effective and proportionate and which had the support of all participants. The principal objective was to improve collaboration.

Match fixing differs from other forms of cheating in two respects. First of all, it involves agreeing to lose a match or to forfeit part of a match rather than breaking the rules to win. And secondly, in the sports betting context, it often involves third parties, i.e. criminals external to the sport who instigate a fix. This means that by definition a multi-agency approach is required. And it means that SGB's face complex, time consuming cases that they are not generally geared up to handle.

The Panel's overriding view was that SGB's should deal with sports people (usually players but sometimes other actors such as referees, coaches or officials), whereas the police should deal with the criminals. SGB's need to move quickly to preserve confidence in their sport. They operate with a lower burden of proof (in Great Britain this is usually the balance of probabilities although the Court of Arbitration for Sport prefers the "comfortable satisfaction" test when serious offences are involved) and they can impose penalties which may prove to be an even greater deterrent than criminal sanctions (such as lengthy bans which impact upon earnings and damage reputations).

Nevertheless, because the same evidence applies to the SGB and criminal investigations, close cooperation between SGB's, the police and, potentially, the Commission is essential.

The Panel's Recommendations:

Rules and Disciplinary Procedures for SGB's

The Panel produced a Code of Conduct for SGB's to adhere to. This set out a framework for a minimum level of rules to be adopted by every sport, a commitment to enforce those rules through disciplinary procedures that are robust and fair and a commitment to apply substantial but proportionate penalties.

The Panel recognized that:

- Some fundamental rules, such as the obligation for competitors to do their best, an absolute prohibition on taking or offering bribes and the obligation to report approaches by match fixers, are common to all sports.
- Every sport is different and needs the flexibility to adapt rules to its own circumstances. For

example, the Panel said that every sport must have rules that define who is allowed to bet but left it to individual sports to decide who that should be. The British Horseracing Authority, for example, allows owners and trainers to back their horses to win but not to bet against them, whereas The Football Association has decided that soccer players must not bet on any matches irrespective of which competition they are in. And, while every sport must have rules preventing the misuse of inside information, what constitutes inside information in one sport might be very different in another.

- What constitutes a lengthy ban in one sport where careers are very short might be much less severe in another sport. Hence each SGB must retain discretion over appropriate penalties.
- SGB's are keen to retain sovereignty. In Great Britain, at least, an SGB's rule book binds participants through contract law which means that it would be difficult to delegate the responsibility for maintaining and enforcing rules to another authority. Nor would it be desirable to do so. While the concept of an over-arching sports integrity authority was mooted by some observers, the Panel saw little attraction in this concept.

The Panel also recommended the creation of a Sports Betting Group comprising representatives of SGB's. Its role is to monitor the implementation of the Code of Conduct, to ensure that it remains dynamic and adapts to changing circumstances to provide advice to SGB's and to liaise with Government. The Group meets on a regular basis and a second body, the Sports Betting Integrity Forum, which includes, in addition, The Commission and bookmakers, has been established recently.

Education of Competitors

The Panel recognized that education programs for all competitors are essential. It recommended that SGB's work alongside Player Associations to deliver comprehensive programs from an early age. They should cover rules, responsibilities (including the obligation to report any approaches by fixers) and risks, including problem gambling. Former players should be used to give the messages maximum impact and players should have access to whistleblower and help lines.

The Pan Sports Integrity Unit

Sports that had experienced serious betting integrity issues, notably horse racing, tennis and cricket (the latter two at an international, rather than a British level), had established integrity units with substantial intelligence gathering and investigative capability.

The Panel recommended the creation of a Pan Sports Integrity Unit that would service the needs of all SGB's. This would be a cost effective use of resources and facilitate greater cooperation and information sharing between sports.

Its role would be to gather and disseminate intelligence, including the information on suspicious betting activity gathered under Licence Condition 15.1 but extending to intelligence received from members of the public, competitors and officials, the media and the police. It would assist in securing Memoranda of Understanding to codify information sharing obligations and Protocols to define who does what during investigations. It would make its expertise and resources available to SGB's to assist with complex investigations although, as noted above, responsibility for enforcement, including prosecution, would remain with SGB's.

After careful deliberation the Panel concluded that the Unit should be located within The Gambling Commission, the logic being that the Commission already has statutory powers of investigation and prosecution, has the ability to void bets and, through Licence Conditions, is able to restrict the type of bet or even prevent bets on non-compliant sports. It also receives all suspicious activity reports from betting operators under Condition 15.1. The Panel recognized that no independent unit could hope to have remotely similar powers and there seemed to be little point in duplicating resources.

Additional Recommendations

The Panel made a number of other miscellaneous recommendations to the Minister:

- The Government should review as a matter of urgency the maximum penalty of two years' imprisonment for the offence of cheating at gambling. Panel members felt this was wholly inadequate as a deterrent. Some members thought there should be a tighter definition of "cheating" but the Government's response was that it was deliberately broad to catch as many offences as possible.
- Betting operators should vary their terms and conditions so that they could refuse to pay out on bets where SGB's rules had been breached (such as misuse of inside information). Thus fixers would not profit from their actions.
- There was serious concern about the scope of the Gambling Commission's jurisdiction given that many companies offering services to British customers did not require a license from the Commission. This included Asian operators from Cagayan, Philippines, several of which sponsored Premier League football teams, and British

household names which had moved their online operations offshore. In both instances, they operated under local licenses issued in offshore European jurisdictions such as the Isle of Man, Gibraltar and Malta. The Minister promised that this would be addressed.

The Gambling (Licensing and Advertising) Act, 2014⁽²⁸⁾

As noted above, a weakness of the 2005 Act is that it caught bookmakers on a point of supply rather than point of consumption basis. Only those bookmakers with equipment based in Great Britain required a license from the Commission and were liable to British betting duty.

Most of the largest British bookmakers moved their online betting operations to Gibraltar to take advantage of a more favorable tax regime. Following their departure, only 20% of the online market (essentially one company, Bet365) remained licensed by the Commission and therefore, inter alia, required to supply information under Licence Condition 15.1.⁽²⁹⁾

The 2014 Act, which was very short, required any operator wishing to transact with, or advertise to, consumers based in Great Britain to hold a British license. They were therefore obliged to follow License Condition 15.1. Further, the Commission would be empowered in future to regulate issues related to sponsorship and advertising by betting companies in the sphere of sports. Any regulatory system should address issues such as apparent conflicts of interest when bookmakers both support a sport financially and take bets on that sport.

IV – Getting the Product Right

In Chapter I, we argued that Americans behave similarly to residents of other countries in that **they still bet on sports even if law-makers put obstacles in their way**. Given that sports betting takes place regardless, we explained in Chapter II why **it would be better for it to take place in a legal and regulated environment rather than with underground bookmakers and offshore websites**: this would offer better protection for consumers, for vulnerable individuals and for sports integrity. Focusing on these sports integrity issues, Chapter III used international experience to outline the sort of framework that could be adopted in a legalized betting world to give sports enhanced protection against manipulation of its competitions for betting gain.

This final Chapter adds another prerequisite for legalization to achieve its goals: **bettors must want to use the new, legal operators**. If they do not find the product offered in a new legal sector sufficiently attractive, they will continue to bet in the domestic black economy or on unauthorized foreign websites, with all the related risks.

From the viewpoint of sports integrity, the success of ‘legalization with regulation’ depends on shifting liquidity from the illegal to the legal sector. At present, fixers can flourish in the illegal sector because the large turnover provided by recreational bettors makes it easy for criminals to place large wagers. The greater the number of recreational bettors who can be persuaded to switch to authorized operators, the less camouflage is then left for the fixers’ nefarious

activities. As liquidity is squeezed in the illegal market, opportunities for criminals to make money diminish. The opportunities disappear altogether if the criminals are, at the end of the process, the only players left in the illegal market.

It is therefore vital that the new betting product is made attractive for consumers. Several of the jurisdictions around the World which have introduced legal betting have not achieved their stated goals. They fail because too many bettors think their product is inferior and those customers prefer to carry on betting with illegal or offshore sites even though the illegal sector offers less or no consumer protection. This general picture holds in Asia where the legal sports betting operations in Hong Kong, China and Singapore (like the legal horse betting operations in such as Japan, South Korea and Malaysia) struggle to compete with illegal bookmakers and mostly secure only a fraction of the total market (from analysis of betting slips found in police raids on street bookmakers, the failure is most apparent in respect of those who place larger than average bets).⁽³⁰⁾ In Hong Kong, the legal operator, the Jockey Club admitted that its betting turnover in 2013 was barely a quarter of that of the illegal market. Similarly, in France, legalization has been successful up to a point but doubts have been expressed over its long-run sustainability as larger scale bettors return to using unauthorized (and in France illegal) websites.

What are the key product characteristics to address to ensure that a new legal sector in the United States will

be attractive enough to attract the bulk of turnover to migrate from the illegal and offshore operators?

First, **value for money** must make the legal sector sufficiently competitive. No doubt there is a 'market for regulation'. Bettors may be willing to pay more (via implicit bookmaker commission built into the odds) to transact in a familiar, well-regulated and therefore safer environment. But they may not be willing to pay much more. The Chinese Sports Lottery offers bets on individual NBA games but it offers only 1.75 (i.e. 100 units staked wins 75 units) compared with 1.95 available on international markets. Across its whole range of sports-based products, it returns about two-thirds of stakes as winnings. The offshore Cagayan operators offer a pay-back in the region of 99%, which becomes about 95% at the level of the agents who collect the money from clients. In this context, uncompetitive pricing is an obvious explanation of why the legal market in China is dwarfed ten-to-one in turnover terms by the illegal market. In France, operators are permitted to pay back in winnings a maximum of 85% of stakes whereas sports betting websites in gambling hubs offshore pay back more than 90%. This is a strong incentive for high value bettors not to use the official channels provided in France. It is worth their while to find ways of circumventing controls.

Second, **consumer choice is very important**. The then Head of Sports Betting for the Hong Kong Jockey Club, Patrick Jay, thought that the restricted offer at the legal operator was the most important reason for its failure to make significant inroads into the market: in contrast to the Jockey Club, "illegal bookmakers offer tens of thousands of football matches and other sports plus 'an array of different types of bets' ... It's a no-brainer for the customer".⁽³¹⁾

There are a number of models for a legal, regulated betting industry. In Great Britain, the market is

competitive with an unlimited number of offline and online private sector operators free to enter the market so long as they pass checks for probity and integrity and agree to the License Conditions. This freedom of entry leads to good value for money for bettors and the domestic illegal market is believed to have been eradicated and the use of unlicensed websites is believed to be low. However, many jurisdictions have chosen less competitive models. For example, the state makes itself the monopolist for legal betting (as in Finland, among many European examples, where a state-owned lottery organization offers the only legal betting as well as running lottery games) or the state allocates a limited number of licenses to private firms. Such monopoly models have appeal for politicians because profit is higher in a non-competitive market. The state can then claim part or all of that profit, directly or through profits taxes or through auctioning of licenses. However, there is a danger that seeking to maximize the revenue of the state will compromise the achievement of the overt goals of legalization. Economics teaches that monopoly profit is maximized with a high price/ low turnover business model. But low turnover will leave lots of business in the illegal sector with consequent risk for sports integrity (and individual consumers, vulnerable individuals, etc).

The need for betting with legal operators to be attractive points to the desirability of governments not being too ambitious in terms of tax rates imposed on betting. There will be revenue gains for states but these will be limited because, legal or not, bettors have other options when choosing where to bet. Further, taxes should be well structured. They should be levied on the winnings made by the operator rather than on stakes because taxing the latter has the effect of moving the profit maximizing outcome towards the high price/ low volume end of the spectrum.

Regarding consumer choice, some jurisdictions, such as France and Italy restrict the events which are allowed to be the subject for betting; France indeed gives sports competitions the right to veto the inclusion of its events in the betting offer. Other jurisdictions, such as Australia, prohibit in-play betting. However, **all such restrictions are likely to be counter-productive.** For example, there may be a temptation to outlaw betting on lower tiers of competition on the grounds that players are poorly paid and therefore more susceptible to accepting bribes to underperform. But it is precisely these high risk competitions where there is greatest need for betting to be shifted into legal markets. If costs of paying off players are low, there does not need to be much liquidity in the illegal market for criminals to make a profit from fixing. It is therefore particularly important that as much betting as possible on, for example, college sports should be shifted from hidden and risky illegal markets to a properly monitored legal market.

As for in-play betting, it was made feasible by new technology and has quickly become hugely popular because, in conjunction with watching a match on television, it provides a new and, for many, exciting consumer experience. Recent data from the Gambling Commission in Great Britain suggests that more than one-third of online sports betting revenue for British-licensed sites is accounted for by the in-play market.⁽³²⁾ The Spanish regulator reports that 74% of the amount bet on-line was in-play. Industry estimates speak of yet higher market shares in some countries and for some sports.

It is clear that bettors want in-play betting. Unauthorized websites will provide the service if legal websites do not. This was explicitly why Italy authorized license holders to offer in-play for the first time in 2014⁽³³⁾ and why recently the body which represents major Australian sports including cricket,

tennis, Australian Football and the rugby league urged the Government to permit in-play betting.⁽³⁴⁾ Clearly any move towards legalization in the United States which did not allow for in-play online betting would be out of step with trends in demand and would run the risk of leaving the illegal and offshore markets dominant in the capture of American sports betting dollars. This liquidity in the underground and unregulated offshore sectors would then continue to provide an ongoing threat to sports integrity.

Conclusion

In conclusion, and as stated at the outset of this research, America lags greatly behind the rest of the world in the area of sports betting. Rather than setting the standard, the United States is on par with Russia and China, having forced a groundswell of black market gambling by prohibiting the popular pastime of sports betting.

Illegal gambling leaves sports open to manipulation, allowing illicit actors to operate freely. Moreover, the lack of transparency in black market betting leaves little opportunity to deal with problems that can be linked to gambling, including problem gambling, underage gambling, crime and match fixing.

In order to bring the United States up to international standards, choke-off black market gambling and preserve and protect the integrity of sports, America should implement a sound and robust regulatory framework to legalize sports betting, drawing on the experience of mature gaming markets, such as Great Britain.

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David Forrest trained as an economist at the University of Western Ontario before returning to England to pursue an academic career in applied economics and econometrics. He is currently Professor of Economics in the University of Liverpool Management School and Honorary Professor, Macau Polytechnic Institute.

For the last twenty years, the focus of David's substantial research output has been on the two fields of sports economics and the economics of gambling. Latterly he has brought these two interests together in analyzing issues surrounding match fixing on which he has advised a number of national and international organizations.

David is also heavily involved in issues surrounding problem gambling. He serves on the Responsible Gambling Strategy Board, which advises public authorities in Great Britain on regulatory issues concerning harm minimization. Recently he has published two major reports for the Responsible Gambling Trust analyzing the behavior of machine players in British casinos.

For two decades, **Rick Parry** has played an advisory role for major sports organizations and events around the world with a particular focus on promoting integrity of sports.

Trained as a Chartered Accountant, Rick spent time as a management consultant at Ernst & Young where he participated in Manchester's bid for the 1996 Olympic Games.

As founding CEO of the FA Premier League, Rick negotiated the league's first record breaking TV contracts and put in place the governance structures that have been the bedrock of the league's success. In 1997, Rick joined Liverpool FC as CEO and was elected to the Board of the European Club Association in 2008. Since leaving Liverpool FC, Rick has consulted on football related projects in Saudi Arabia, Qatar, the UAE, Jordan, the US and Mexico. He has just been appointed to the Investigatory Chamber of UEFA's Club Financial Control Body.

Rick chaired the UK Government's Sports Betting Integrity Panel in 2009 and acted as a special advisor to the Culture, Media and Sport Select Committee on its inquiry into football governance in 2011. In 2014, Rick accepted an invitation to chair a Government Inquiry into the organization of horse racing and betting on the island of Mauritius.

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