

Op-Ed/Editorials - Poker Tournaments In Bars – The New Prohibition?

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In January 1919, Prohibition became the law of the land, when the 36th state ratified the 18th Amendment to the U.S. Constitution. That state was Nevada. The fact that it was Nevada that created the “noble experiment” in writing moral restrictions into law, shows that this was truly a different era. Prohibition was the height (or depth) of the notion that the law should tell people how to act, not just outlaw behavior we all agree is evil. America has flip-flopped on this question since the first colonies were founded. The Massachusetts Bay Colony outlawed playing cards. Its neighbor, New York, had racetracks; though it still outlawed murder. Victorian morality found its way into national law in the first quarter of the 20th century. Nevada, for example, had legalized casinos in 1869. But the State Legislature outlawed gambling in 1909. The territories of New Mexico and Arizona were told that they would have to close their casinos, the last in the U.S., if they wanted to become states. All state lotteries were shut down. As were almost every racetrack. The year 1909 also saw the first international treaty on drugs and the first effective anti-prostitution laws. The urge to write morality into law reached its most extreme with the Harrison Drug Act, which could result in the death penalty for first time users, and the Mann Act, which made it a federal crime to transport a woman across state lines for immoral purposes.

Gambling, drugs, sex and, of course, booze – by 1916, 23 of the 48 states, more than half, had passed local prohibitions on alcoholic beverages. It was thus not a big surprise when Prohibition was written into federal law.

In 2006, bars can obviously serve booze (although in states like California, they are not allowed to let patrons smoke). But they are facing prosecution, or worse, loss of their liquor licenses, for conducting poker games.

The fight over the rights of bars to run Texas Hold 'em tournaments does have some significant differences with the better known Prohibition on alcohol. Legally, Prohibition was a federal issue. It involved an actual amendment to the U.S. Constitution, a rare and difficult feat to accomplish, and a federal statute, the Volstead Act, named after its author, Andrew Volstead, U.S. Senator from Minnesota.

Gambling, on the other hand is almost always exclusively a state issue. Not only is the federal government not interested, it usually does not have the power to directly stop the gambling, unless interstate organized crime is involved.

But, as the history shows, the bigger issue is that Prohibition was the end result of movements to tell people what they can and cannot do, even when they are not harming anyone else. The purpose of law in the present era is seen as almost the exact opposite. The legalization of gambling shows that there is broad public support among voters and legislators to let adults decide for themselves whether they want to engage in dangerous activities.

But the law changes very slowly. Changes in law always trail changes in society. So while poker tournaments have become a national craze, even televised practically around the clock, local law may still make the activity technically illegal.

Does it matter? Obviously, for a person who faces a fine, or jail, or loss of their liquor license, whether or not the law is enforced matters a great deal. But from the viewpoint of society, the issue is more complex.

The "lessons of Prohibition" are often brought forward when someone is advocating decriminalizing something, like marijuana, or gambling. The idea is that having laws on the books that no one respects leads to general contempt of all laws. Worse, since these are criminal statutes, the police can misuse the laws for selective enforcement: Arresting only people who are of the wrong race or don't pay them bribes.

It does seem to be true that modern organized crime was born during Prohibition. Here was a nationwide demand for an illegal product. So, commercial organizations arose to meet that demand, enterprises which were, by definition, criminal.

But the Prohibition model is a little simplistic. There are always lots of laws on the books which most people don't obey, without there being a breakdown of respect for law enforcement. When traffic is light on California freeways, the only people who drive under the speed limit are those who are drunk or see a cop.

And every survey shows that people don't want some laws enforced, although they want them to remain on the books. Anti-gambling laws have about as much support as traffic laws. Americans only seem to want gambling laws enforced when it is their neighbors having a party that is too noisy.

So bar-owners are faced with trying to run poker promotions without violating their local laws.

The laws vary greatly from state to state. One nearly universal prohibition is on running commercial poker games without a gaming license. Many states do allow casinos and cardclubs to operate poker games. But for everyone else, it seems clear you cannot run money games and directly take a piece of the action, either by raking the pot or charging a seat fee per half hour. Charging players a fee to enter the tournament is not allowed, where the bar keeps a part of the fee.

At the other extreme, games played for free, particularly those where nothing can be won, are usually legal. In March 2005, the Washington Gambling Commission ruled that it was legal to play poker in restaurants and bars, as long as there was no money involved.

Entrepreneurs have jumped at the chance to help bars run free tournaments. In Minnesota, Chippy Poker and a half-dozen other unnamed companies got a glowing write-up in the Minneapolis Star Tribune, by running Texas Hold 'em tournaments "at more than 100 bars each week." Prizes include trophies, cash and entries into casino poker tournaments.

But these games are not universally legal. The Attorney General of California has made it clear that he thinks every form of gambling, with the obvious exceptions for card clubs, Indian casinos, etc., is prohibited. This includes gambling that is not gambling, because it is free and players cannot win anything except more time at the tables. He is clearly wrong, but many potential operators do not want to spend tens of thousands of dollars to defend themselves.

In other states, the legal issues are not as clear. Louisiana is in the center of a

number of fights over free poker tournaments in bars. The problem is that the law can be read as putting a bar owner into the business of illegal gambling because he makes a profit from increased sales during the games.

It was reported that Joe Hall, owner of "Phil Brady's", pleaded no contest to the Alcohol Beverage Control board for holding poker games at his bar. The board fined him \$1,000, and made him forfeit about \$3,000 worth of poker equipment and the money he made selling alcohol during the poker games. But he kept his liquor license.

To resolve the issue, people like Joe Hall are taking their cases to the legislatures. In Baton Rouge at the end of April, a majority of the House voted to make poker tournaments in bars legal. Of course, for individuals already operating poker games, the bill would merely "clarify" what they contend is existing law.

But House Bill 1149 did not become law. Gov. Kathleen Blanco came out against the measure as being "an expansion of gambling." She must be shocked... shocked... that anyone would suggest is gambling in Louisiana.

So the bill got only 51 votes in favor to 45 against, when it needed 53 to go to the Senate.

Another attempt is inevitable.

Meanwhile, the Baton Rouge Advocate reported this wonderful exchange, apparently on the floor of the House, after the bill was defeated: Rep. Warren Triche, D-Thibodaux, the bill's author, was asked by Rep. Jack Smith, D-Stephensville, "if it would still be OK to have legislative poker games." Triche said it would.

What do you think? Comments on this article can be addressed to Prof. I. Nelson Rose.

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