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## Opinion

### How the Supreme Court turned America into a casino

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When historians evaluate the Supreme Court’s impact on early 21st-century America, they will no doubt focus on the 2015 decision legalizing same-sex marriage or the overthrow of *Roe v. Wade* last year.

As Sunday’s [Super Bowl](#) reminds us, however, the most underrated Supreme Court decision of the past decade might be [Murphy v. National Collegiate Athletic Association](#). In that [2018 ruling](#), the justices declared unconstitutional a [1992 federal law](#) that barred 46 states from repealing their then-existing bans on sports betting.

Now, 36 states and D.C. permit bets on the NFL, MLB, NBA — you name it. Leagues that once shunned betting as a threat to their integrity cheerfully [accept](#) legal sportsbooks [as official “partners.”](#)

Whether or not you bet, there’s no escape from advertising by companies such as FanDuel and DraftKings. With bewildering speed, a language once intelligible only to Las Vegas habitués — “parlay,” “over-under” — [has gone mainstream](#).

This year’s Super Bowl was the first played in a state — Arizona — with legal sports gambling. A service that tracks the location of online sports betting transactions found that 100,000 of the 100 million “pings” to sports betting apps that it traced nationwide on Sunday came from State Farm Stadium or nearby, according to the Wall Street Journal. It’s not yet known how much people wagered on the contest via legal sportsbooks, but the industry’s trade association has [estimated \\$1 billion](#).

To be sure, [Texas](#), [California](#) and [Florida](#) — the three most populous states — do not yet have legal sports betting, due to residual public reluctance and [conflicts](#) over control of the business with Native American tribes. Eventual adoption seems inevitable, though.

American capitalism has come a long way since Max Weber, roughly 120 years ago, argued that it epitomized a “[Protestant ethic](#),” which sanctified savings, investment and other productivity-enhancing deferrals of gratification.

Legal sports betting — at times with money [borrowed](#) via credit cards — typifies “limbic capitalism.”

The phrase, [coined](#) by social historian David Courtwright, alludes to the brain’s [emotional center](#) and the way contemporary business profits from selling substances (sugary food) and experiences (sports betting) that flood it with pleasure-causing hormones. Against the ideal of consumer choice, Courtwright’s concept poses the reality of consumer addiction.

Gambling is [known to be addictive](#) because it supplies such a rush. Though integrity of sports was the 1992 law’s primary concern, gambling addiction was also a potential harm against which the measure, sponsored by former NBA star Sen. Bill Bradley (D-N.J.), sought to protect.

The Supreme Court’s [2018 ruling](#) hinged not on those considerations, but on states’ rights. It held the law amounted to federal “commandeering” of states — as in, dictating what they can and can’t permit.

This violated a doctrine the court has developed to enforce the 10th Amendment’s reservation for the states of power “not delegated to the United States.” Ruling otherwise, the court held, would have blurred federal-state lines of accountability. Furthermore, the court ruled, once it found “commandeering” in a part of the statute, it had to strike down the entire law, including sections that limited sports betting on other grounds.

“The legalization of sports gambling requires an important policy choice,” Justice Samuel A. Alito Jr. wrote in the majority opinion, “but the choice is not ours to make.” This was true enough, in a formal sense, but also a pretty blithe way to frame a decision whose impact was eminently foreseeable.

Alito’s the-Constitution-made-me-do-it posture anticipated a similar note [in the first sentence](#) of the court’s 2022 opinion overruling *Roe*, which he also wrote: “Abortion presents a profound moral issue on which Americans hold sharply conflicting views.”

Whatever else might be said about it, the *Murphy* outcome was not purely conservative, either in the court lineup — including liberal Justice Elena Kagan — that supported it, or in its social impact.

Intentionally or not, it fostered a kind of worldly libertarianism, apt for a society in which gambling, including lotteries run by the states, was already pervasive, secular values were gaining ascendancy over religion-based morality, and legalization promised — as it did for marijuana — to mute the harms associated with black markets.

It was Democrat Bradley’s law that deserved to be called conservative, in its (doomed) attempt to hold a moral line.

And on the court in 2018, it was Ruth Bader Ginsburg who exercised judicial restraint, noting in dissent that the court did not need to strike down the whole Bradley law to police the line between federal and state authority.

Even if Congress did overstep by specifically telling legislatures not to allow sports gambling, she argued, it could still have the power, which it tried to exercise in the statute, to curb legal betting through its authority over interstate commerce.

We'll never know how Super Sunday, or any other day, would have been different if Ginsburg's view had prevailed in *Murphy*, but at least in that case the court's most liberal member was also its least radical.