SUPREME COURT OF THE UNITED STATES

No. 03–725

DAVID B. PASQUANTINO, CARL J. PASQUANTINO, AND ARTHUR HILTS, PETITIONERS *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[April 26, 2005]

JUSTICE THOMAS delivered the opinion of the Court.

At common law, the revenue rule generally barred courts from enforcing the tax laws of foreign sovereigns. The question presented in this case is whether a plot to defraud a foreign government of tax revenue violates the federal wire fraud statute, 18 U. S. C. §1343 (2000 ed., Supp. II). Because the plain terms of §1343 criminalize such a scheme, and because this construction of the wire fraud statute does not derogate from the common-law revenue rule, we hold that it does.

I

Petitioners Carl J. Pasquantino, David B. Pasquantino, and Arthur Hilts were indicted for and convicted of federal wire fraud for carrying out a scheme to smuggle large quantities of liquor into Canada from the United States. According to the evidence presented at trial, the Pasquantinos, while in New York, ordered liquor over the telephone from discount package stores in Maryland. See 336 F. 3d 321, 325 (CA4 2003) (en banc). They employed Hilts and others to drive the liquor over the Canadian

border, without paying the required excise taxes. *Ibid.* The drivers avoided paying taxes by hiding the liquor in their vehicles and failing to declare the goods to Canadian customs officials. *Id.*, at 333. During the time of petitioners' smuggling operation, between 1996 and 2000, Canada heavily taxed the importation of alcoholic beverages. See 1997 S. C., ch. 36, §§21.1(1), 21.2(1); Excise Act Schedule 1.(1), R. S. C., ch. E–14 (1985); Excise Act 2001, Schedule 4, ch. 22, 2002 S. C. 239. Uncontested evidence at trial showed that Canadian taxes then due on alcohol purchased in the United States and transported to Canada were approximately double the liquor's purchase price. App. 65–66.

Before trial, petitioners moved to dismiss the indictment on the ground that it stated no wire fraud offense. The wire fraud statute prohibits the use of interstate wires to effect "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U. S. C. §1343 (2000 ed., Supp. II). Petitioners contended that the Government lacked a sufficient interest in enforcing the revenue laws of Canada, and therefore that they had not committed wire fraud. App. 48–57. The District Court denied the motion and the case went to trial. The jury convicted petitioners of wire fraud.

Petitioners appealed their convictions to the United States Court of Appeals for the Fourth Circuit, again urging that the indictment failed to state a wire fraud offense. They argued that their prosecution contravened the common-law revenue rule, because it required the court to take cognizance of the revenue laws of Canada. Over Judge Hamilton's dissent, the panel agreed and reversed the convictions. 305 F. 3d 291, 295 (2002). Petitioners also argued that Canada's right to collect taxes from them was not "money or property" within the meaning of the wire fraud statute, but the panel unanimously

rejected that argument. *Id.*, at 294–295; *id.*, at 299 (Hamilton, J., dissenting).

The Court of Appeals granted rehearing en banc, vacated the panel's decision, and affirmed petitioners' convictions. 336 F. 3d 321 (CA4 2003). It concluded that the common-law revenue rule, rather than barring any recognition of foreign revenue law, simply allowed courts to refuse to enforce the tax judgments of foreign nations, and therefore did not preclude the Government from prosecuting petitioners. *Id.*, at 327–329. The Court of Appeals held as well that Canada's right to receive tax revenue was "money or property" within the meaning of the wire fraud statute. *Id.*, at 331–332.

We granted certiorari to resolve a conflict in the Courts of Appeals over whether a scheme to defraud a foreign government of tax revenue violates the wire fraud statute. 541 U. S. 972 (2004). Compare *United States* v. *Boots*, 80 F. 3d 580, 587 (CA1 1996) (holding that a scheme to defraud a foreign nation of tax revenue does not violate the wire fraud statute), with *United States* v. *Trapilo*, 130 F. 3d 547, 552–553 (CA2 1997) (holding that a scheme to defraud a foreign nation of tax revenue violates the wire fraud statute). We agree with the Court of Appeals that it does and therefore affirm the judgment below.[1]

II

We first consider whether petitioners' conduct falls within the literal terms of the wire fraud statute. The

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[1] We express no view on the related question whether a foreign government, based on wire or mail fraud predicate offenses, may bring a civil action under the Racketeer Influenced and Corrupt Organizations Act for a scheme to defraud it of taxes. See *Attorney General of Canada* v. *R. J. Reynolds Tobacco Holdings, Inc.*, 268 F. 3d 103, 106 (CA2 2001) (holding that the Government of Canada cannot bring a civil RICO suit to recover for a scheme to defraud it of taxes); *Republic of Honduras* v. *Philip Morris Cos.*, 341 F. 3d 1253, 1255 (CA11 2003) (same with respect to other foreign governments).

statute prohibits using interstate wires to effect "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U. S. C. §1343 (2000 ed., Supp. II). Two elements of this crime, and the only two that petitioners dispute here, are that the defendant engage in a "scheme or artifice to defraud," *ibid.*, and that the "object of the fraud . . . be '[money or] property' in the victim's hands," *Cleveland* v. *United States,* 531 U. S. 12, 26 (2000).[2] Petitioners' smuggling operation satisfies both elements.

Taking the latter element first, Canada's right to uncollected excise taxes on the liquor petitioners imported into Canada is "property" in its hands. This right is an entitlement to collect money from petitioners, the possession of which is "something of value" to the Government of Canada. *McNally* v. *United States,* 483 U. S. 350, 358 (1987) (internal quotation marks omitted). Valuable entitlements like these are "property" as that term ordinarily is employed. See *Leocal* v. *Ashcroft,* 543 U. S. ___, ___ (2004) (slip op., at 7) ("When interpreting a statute, we must give words their ordinary or natural meaning" (internal quotation marks omitted)); Black's Law Dictionary 1382 (4th ed. 1951) (defining "property" as "extend[ing] to every species of valuable right and interest"). Had petitioners complied with this legal obligation, they would have paid money to Canada. Petitioners' tax evasion deprived Canada of that money, inflicting an economic injury no less than had they embezzled funds from the Canadian treasury. The object of petitioners' scheme was

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[2] Although *Cleveland* interpreted the term "property" in the mail fraud statute, 18 U. S. C. §1341 (2000 ed., Supp. II), we have construed identical language in the wire and mail fraud statutes *in pari materia.* See *Neder* v. *United States,* 527 U. S. 1, 20 (1999) ("'scheme or artifice to defraud'"); *Carpenter* v. *United States,* 484 U. S. 19, 25, and n. 6 (1987) ("scheme or artifice to defraud"; "money or property").

to deprive Canada of money legally due, and their scheme thereby had as its object the deprivation of Canada's "property."

The common law of fraud confirms this characterization of Canada's right to excise taxes. The right to be paid money has long been thought to be a species of property. See 3 W. Blackstone, Commentaries on the Laws of England 153–155 (1768) (classifying a right to sue on a debt as personal property); 2 J. Kent, Commentaries on American Law *351 (same). Consistent with that understanding, fraud at common law included a scheme to deprive a victim of his entitlement to money. For instance, a debtor who concealed his assets when settling debts with his creditors thereby committed common-law fraud. 1 J. Story, Equity Jurisprudence §378 (I. Redfield 10th rev. ed. 1870); *Chesterfield* v. *Janssen*, 28 Eng. Rep. 82, 2 Ves. Sen. 125 (ch. 1750); 1 S. Rapalje & R. Lawrence, A Dictionary of American and English Law 546 (1883). That made sense given the economic equivalence between money in hand and money legally due. The fact that the victim of the fraud happens to be the Government, rather than a private party, does not lessen the injury.

Our conclusion that the right to tax revenue is property in Canada's hands, contrary to petitioners' contentions, is consistent with *Cleveland*, *supra*. In that case, the defendant, Cleveland, had obtained a video poker license by making false statements on his license application. *Id.*, at 16–17. We held that a State's interest in an unissued video poker license was not "property," because the interest in choosing particular licensees was "'purely regulatory'" and "[could not] be economic." *Id.*, at 22–23. We also noted that "the Government nowhere allege[d] that Cleveland defrauded the State of any money to which the State was entitled by law." *Ibid.*

Cleveland is different from this case. Unlike a State's interest in allocating a video poker license to particular

applicants, Canada's entitlement to tax revenue is a straightforward "economic" interest. There was no suggestion in *Cleveland* that the defendant aimed at depriving the State of any money due under the license; quite the opposite, there was "no dispute that [the defendant's partnership] paid the State of Louisiana its proper share of revenue" due. *Id.*, at 22. Here, by contrast, the Government alleged and proved that petitioners' scheme aimed at depriving Canada of money to which it was entitled by law. Canada could hardly have a more "economic" interest than in the receipt of tax revenue. *Cleveland* is therefore consistent with our conclusion that Canada's entitlement is "property" as that word is used in the wire fraud statute.

Turning to the second element at issue here, petitioners' plot was a "scheme or artifice to defraud" Canada of its valuable entitlement to tax revenue. The evidence showed that petitioners routinely concealed imported liquor from Canadian officials and failed to declare those goods on customs forms. See 336 F. 3d, at 333. By this conduct, they represented to Canadian customs officials that their drivers had no goods to declare. This, then, was a scheme "designed to defraud by representations," *Durland* v. *United States,* 161 U. S. 306, 313 (1896), and therefore a "scheme or artifice to defraud" Canada of taxes due on the smuggled goods.

Neither the antismuggling statute, 18 U. S. C. §546,[3]

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[3] Section 546 provides: "Any person owning in whole or in part any vessel of the United States who employs, or participates in, or allows the employment of, such vessel for the purpose of smuggling, or attempting to smuggle, or assisting in smuggling, any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, and any citizen of, or person domiciled in, or any corporation incorporated in, the United States, controlling or substantially participating in the control of any such vessel, directly or

nor U. S. tax treaties, see *Attorney General of Canada* v. *R. J. Reynolds Tobacco Holdings, Inc.*, 268 F. 3d 103, 115–119 (CA2 2001), convince us that petitioners' scheme falls outside the terms of the wire fraud statute.[4] Unlike the treaties and the antismuggling statute, the wire fraud statute punishes fraudulent use of domestic wires, whether or not such conduct constitutes smuggling, occurs aboard a vessel, or evades foreign taxes. See *post*, at 9, n. 9 (GINSBURG, J., dissenting) (noting that the antismuggling statute does not apply to this prosecution). Petitioners would be equally liable if they had used interstate wires to defraud Canada not of taxes due, but of money from the Canadian treasury. The wire fraud statute "applies without differentiation" to these two categories of fraud. *Clark* v. *Martinez,* 543 U. S. ___, ___ (2005) (slip op., at 6). "To give these same words a different meaning for each category would be to invent a statute rather than interpret one." *Ibid.* We therefore decline to "interpret [this] criminal statute more narrowly than it is written." *Brogan* v. *United States,* 522 U. S. 398, 406 (1998).

III

We next consider petitioners' revenue rule argument. Petitioners argue that, to avoid reading §1343 to derogate

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indirectly, whether through ownership of corporate shares or otherwise, and allowing the employment of said vessel for any such purpose, and any person found, or discovered to have been, on board of any such vessel so employed and participating or assisting in any such purpose, shall be fined under this title or imprisoned not more than two years, or both."

[4] Any overlap between the antismuggling statute and the wire fraud statute is beside the point. The Federal Criminal Code is replete with provisions that criminalize overlapping conduct. See Stuntz, The Pathological Politics of Criminal Law, 100 Mich. L. Rev. 505, 518, and n. 62 (2002); *United States* v. *Wells,* 519 U. S. 482, 505–509, and nn. 8–10 (1997) (STEVENS, J., dissenting). The mere fact that two federal criminal statutes criminalize similar conduct says little about the scope of either.

from the common-law revenue rule, we should construe the otherwise-applicable language of the wire fraud statute to except frauds directed at evading foreign taxes. Their argument relies on the canon of construction that "[s]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except where a statutory purpose to the contrary is evident." *United States* v. *Texas,* 507 U. S. 529, 534 (1993) (internal quotation marks and citation omitted). This presumption is, however, no bar to a construction that conflicts with a common-law rule if the statute "'speak[s] directly' to the question addressed by the common law." *Ibid.* (citations omitted).

Whether the wire fraud statute derogates from the common-law revenue rule depends, in turn, on whether reading §1343 to reach this prosecution conflicts with a well-established revenue rule principle. We clarified this constraint on the application of the nonderogation canon in *United States* v. *Craft,* 535 U. S. 274 (2002). The issue in *Craft* was whether the property interest of a tenant by the entirety was exempt from a federal tax lien. *Id.*, at 276. We construed the federal tax lien statute to reach such a property interest, despite the tension between that construction and the common-law rule that entireties property enjoys immunity from liens, because this "common-law rule was not so well established with respect to the application of a federal tax lien that we must assume that Congress considered the impact of its enactment on the question now before us." *Id.*, at 288.[5] So too here,

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[5] See also *United States* v. *Texas*, 507 U. S. 529, 534 (1993) (requiring the statute to "'speak directly' to the question addressed by the common law"); *Astoria Fed. Sav. & Loan Assn.* v. *Solimino,* 501 U. S. 104, 108 (1991) (stating that this presumption is applicable "where a common-law principle is well established"); *United States* v. *Turley,* 352 U. S. 407, 411 (1957) (declining to interpret the term "'stolen'" in a federal criminal statute according to the common law because the term had "no accepted common-law meaning").

before we may conclude that Congress intended to exempt the present prosecution from the broad reach of the wire fraud statute, we must find that the common-law revenue rule clearly barred such a prosecution. We examine the state of the common law as of 1952, the year Congress enacted the wire fraud statute. See *Neder* v. *United States,* 527 U. S. 1, 22–23 (1999).[6]

The wire fraud statute derogates from no well-established revenue rule principle. We are aware of no common-law revenue rule case decided as of 1952 that held or clearly implied that the revenue rule barred the United States from prosecuting a fraudulent scheme to evade foreign taxes. The traditional rationales for the revenue rule, moreover, do not plainly suggest that it swept so broadly. We consider these two points in turn.

A

We first consider common-law revenue rule jurisprudence as it existed in 1952, the year Congress enacted §1343. Since the late 19th and early 20th century, courts have treated the common-law revenue rule as a corollary of the rule that, as Chief Justice Marshall put it, "[t]he Courts of no country execute the penal laws of another." *The Antelope,* 10 Wheat. 66, 123 (1825). The rule against the enforcement of foreign penal statutes, in turn, tracked the common-law principle that crimes could only be prosecuted in the country in which they were committed. See, *e.g.,* J. Story, Commentaries on the Conflict of Laws §620, p. 840 (M. Bigelow ed. 8th ed. 1883). The basis for infer-

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[6]These principles convince us that much more than the summary conclusion that it is "unavoidably obvious . . . that this prosecution directly implicates the revenue rule" and that this prosecution is "'primarily about enforcing Canadian law,'" *post,* at 6, 11 (GINSBURG, J., dissenting) is required to demonstrate that a revenue rule principle firmly established as of 1952 bars this prosecution. That task requires inquiry into common-law revenue rule jurisprudence—an inquiry the dissent does not undertake.

ring the revenue rule from the rule against foreign penal enforcement was an analogy between foreign revenue laws and penal laws. See *Wisconsin* v. *Pelican Ins. Co.,* 127 U. S. 265, 290 (1888); Leflar, Extrastate Enforcement of Penal and Governmental Claims, 46 Harv. L. Rev. 193, 219 (1932) (hereinafter Leflar).

Courts first drew that inference in a line of cases prohibiting the enforcement of tax liabilities of one sovereign in the courts of another sovereign, such as a suit to enforce a tax judgment.[7] The revenue rule's grounding in these cases shows that, at its core, it prohibited the collection of tax obligations of foreign nations. Unsurprisingly, then, the revenue rule is often stated as prohibiting the collection of foreign tax claims. See Brief for Petitioners 16 (noting that "[t]he most straightforward application of the revenue rule arises when a foreign sovereign attempts to sue directly in its own right to enforce a tax judgment in the courts of another nation").[8]

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[7] See *Colorado* v. *Harbeck*, 232 N. Y. 71, 85, 133 N. E. 357, 360 (App. 1921); *Maryland* v. *Turner*, 75 Misc. 9, 10–13, 132 N. Y. S. 173, 175 (Sup. Ct. 1911); *Detroit* v. *Proctor*, 44 Del. 193, 200–202, 61 A. 2d 412, 415–416 (Super. Ct. 1948); *Moore* v. *Mitchell*, 30 F. 2d 600, 603–604 (CA2 1929) (L. Hand, J., concurring) (citing cases), aff'd on other grounds, 281 U. S. 18 (1930); *Arkansas* v. *Bowen*, 20 D. C. 291, 295 (Sup. Ct. 1891), aff'd, 3 App. D. C. 537 (1894); Leflar 216, n. 63 (citing cases).

[8] See also *Her Majesty the Queen* v. *Gilbertson*, 597 F. 2d 1161, 1163–1164 (CA9 1979) (stating the revenue rule as an exception to the rule that a state enforces foreign judgments, citing, *inter alia*, pre-1952 cases); *Peter Buchanan Ltd.* v. *McVey*, 1955 A. C. 516, 526 (Ir. H. Ct. 1950), app. dism'd, 1955 A. C. 530 (Ir. Sup. Ct. 1951) (citing English revenue rule cases as "establish[ing] that the courts of our country will not enforce the revenue claims of a foreign country in a suit brought for the purpose by a foreign public authority"); Leflar 219 (stating the revenue rule as a prohibition on "extrastate actions for revenue collection"); *Moore*, *supra*, at 603 (L. Hand, J., concurring) (characterizing the revenue rule as an exception to the rule that a "liability arising under the law of a foreign state will be recognized by the courts of another"); *Harbeck*, *supra*, at 85, 133 N. E., at 360 (stating that the revenue rule

The present prosecution is unlike these classic examples of actions traditionally barred by the revenue rule. It is not a suit that recovers a foreign tax liability, like a suit to enforce a judgment. This is a criminal prosecution brought by the United States in its sovereign capacity to punish domestic criminal conduct. Petitioners nevertheless argue that common-law revenue rule jurisprudence as of 1952 prohibited such prosecutions. Revenue rule cases, however, do not establish that proposition, much less clearly so.

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Petitioners first analogize the present action to several cases that have applied the revenue rule to bar indirect enforcement of foreign revenue laws, in contrast to the direct collection of a tax obligation. They cite, for example, a decision of an Irish trial court holding that a private liquidator could not recover assets unlawfully distributed and moved to Ireland by a corporate director, because the recovery would go to satisfy the company's Scottish tax obligations. *Peter Buchanan Ltd.* v. *McVey*, 1955 A. C. 516, 529–530 (Ir. H. Ct. 1950), app. dism'd, 1955 A. C. 530 (Ir. Sup. Ct. 1951).[9] The court found that "the sole object

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"precludes one state from acting as a collector of taxes for a sister state"); cf. Restatement (Third) of Foreign Relations Law of the United States §483 (1986) (stating that the rule does not require, but allows, courts to refuse enforcement of foreign tax judgments).

[9] Petitioners also cite *QRS 1 Aps* v. *Frandsen*, [2000] I. L. Pr. 8, [1999] 3 All E. R. 289 (App.) (holding that a liquidator was not entitled to recover corporate funds needed to pay foreign taxes); *Stringam* v. *Dubois*, [1993] 3 W. W. R. 273, 7 Alta. L. R. (3d) 120 (App. 1992) (rejecting suit by the U. S. executor of a will to require the sale of real property in Canada to pay U. S. estate taxes); *Banco Do Brasil, S. A.* v. *A. C. Israel Commodity Co.*, 12 N. Y. 2d 371, 377, 190 N. E. 2d 235, 237 (App. 1963) (rejecting suit by instrumentality of Brazil to recover for a conspiracy to circumvent its foreign exchange regulations); *United States* v. *Harden*, [1963] 44 W. W. R. 630, 633, S. C. R. 366, 370–371 (Sup. Ct. Can.) (holding that a stipulated judgment to pay U. S. taxes was not

of the liquidation proceedings in Scotland was to collect a revenue debt," because if the liquidator won, "every penny recovered after paying certain costs . . . could be claimed by the Scottish Revenue." *Id.*, at 530. According to the *Buchanan* court, "[i]n every case the substance of the claim must be scrutinized, and if it then appears that it is really a suit brought for the purpose of collecting the debts of a foreign revenue it must be rejected." *Id.*, at 529.

Buchanan and the other cases on which petitioners rely cannot bear the weight petitioners place on them. Many of them were decided after 1952, too late for the Congress that passed the wire fraud statute to have relied on them. Others come from foreign courts. Drawing sure inferences regarding Congress' intent from such foreign citations is perilous, as several of petitioners' cases illustrate.[10]

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enforceable in Canadian courts); *Attorney-General for Canada* v. *Schulze*, [1901] 9 Scots Law Times 4, 4–5 (refusing to enforce judgment for court costs, where costs were incurred by a foreign state in defending the legality of its forfeiture of the defendant's goods as penalty for infraction of revenue laws); *Indian and General Investment Trust, Ltd.* v. *Borax Consolidated Ltd.*, [1920] 1 K. B. 539, 550 (holding that a private debtor was not entitled to deduct U. S. income tax from its interest payments on loan due in England).

[10] For example, in *Government of India* v. *Taylor*, 1955 A. C. 491 (H. L.), on which petitioners rely heavily, the court's application of the revenue rule rested in part on a ground peculiar to English law, namely, that an Act of Parliament had excluded tax judgments from a statute that provided for the enforcement of foreign judgments. That act thus demonstrated that the revenue rule "appear[ed] to have been recognized by Parliament." *Id.*, at 506; see also *Borax*, *supra*, at 549 (holding that a private debtor was not entitled to deduct U. S. income tax from its interest payments on a loan, in part because "there [was] an express Act of Parliament which permits payment to the English Income Tax authorities to be a discharge pro tanto of the debt which a person owes in respect of yearly interest to another" while "[t]here [was] no Act of Parliament which allows payment of income tax to another country to be reckoned as discharge"); *Schulze*, *supra*, at 5 (holding that a foreign state could not recover court costs incurred in defending the legality of a tax forfeiture, in part because "in our [*i. e.,* Scottish] law, the expenses

More important, none of these cases clearly establishes that the revenue rule barred this prosecution. None involved a domestic sovereign acting pursuant to authority conferred by a criminal statute. The difference is significant. An action by a domestic sovereign enforces the sovereign's own penal law. A prohibition on the enforcement of *foreign* penal law does not plainly prevent the Government from enforcing a *domestic* criminal law. Such an extension, to our knowledge, is unprecedented in the long history of either the revenue rule or the rule against enforcement of penal laws.

Moreover, none of petitioners' cases (with the arguable exception of *Banco Do Brasil, S. A.* v. *A. C. Israel Commodity Co.,* 12 N. Y. 2d 371, 190 N. E. 2d 235 (App. 1963)) barred an action that had as its primary object the deterrence and punishment of fraudulent conduct—a substantial domestic regulatory interest entirely independent of foreign tax enforcement. The main object of the action in each of those cases was the collection of money that would pay foreign tax claims. The absence of such an object in this action means that the link between this prosecution and foreign tax collection is incidental and attenuated at best, making it not plainly one in which "the whole object of the suit is to collect tax for a foreign revenue." *Buchanan*, *supra*, at 529. Even those courts that as of 1952 had extended the revenue rule beyond its core prohibition had not faced a case closely analogous to this one—and thus we cannot say with any reasonable certainty whether Congress in 1952 would have considered this prosecution within the revenue rule.

Petitioners answer that the recovery of taxes is indeed

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of an action have always been regarded as a mere accessory or incident of the principal claim"). In addition, as we explain below, features peculiar to the American system of separation of powers cast doubt on the notion that the revenue rule bars this prosecution. See *infra,* at 18–19.

the object of this suit, because restitution of the lost tax revenue to Canada is required under the Mandatory Victims Restitution Act of 1996, 18 U. S. C. §§3663A–3664 (2000 ed. and Supp. II).[11] We do not think it matters whether the provision of restitution is mandatory in this prosecution. Regardless, the wire fraud statute advances the Federal Government's independent interest in punishing fraudulent domestic criminal conduct, a significant feature absent from all of petitioners' revenue rule cases. The purpose of awarding restitution in this action is not to collect a foreign tax, but to mete out appropriate criminal punishment for that conduct.

In any event, any conflict between mandatory restitution and the revenue rule would not change our holding today. If awarding restitution to foreign sovereigns were contrary to the revenue rule, the proper resolution would be to construe the Mandatory Victims Restitution Act not to allow such awards, rather than to assume that the later enacted restitution statute impliedly repealed §1343 as applied to frauds against foreign sovereigns.

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We are no more persuaded by a second line of cases on which petitioners rely. Petitioners analogize the present case to early English common-law cases from which the revenue rule originally derived. Those early cases involved contract law, and they held that contracts executed with the purpose of evading the revenue laws of other nations were enforceable, notwithstanding the rule against enforcing contracts with illegal purposes. See *Boucher* v. *Lawson*, Cas. T. Hard. 85, 89–90, 95 Eng. Rep. 53, 55–56 (K. B. 1734); *Planche* v. *Fletcher*, 1 Dougl. 251, 99 Eng. Rep.

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[11] See 18 U. S. C. A. §3663A(c)(1)(A)(ii) (Supp. 2004) ("This section shall apply in all sentencing proceedings for convictions of . . . an offense against property under this title . . . including any offense committed by fraud or deceit").

164 (K. B. 1779). Petitioners argue that these cases demonstrate that "indirect" enforcement of revenue laws is at the very core of the common-law revenue rule, rather than at its margins.

The argument is unavailing. By the mid-20th century, the revenue rule had developed into a doctrine very different from its original form. Early revenue rule cases were driven by the interest in lessening the commercial disruption caused by the high tariffs of the day. As Lord Hardwicke explained, if contracts that aimed at circumventing foreign revenue laws were unenforceable, "it would cut off all benefit of such trade from this kingdom, which would be of very bad consequence to the principal and most beneficial branches of our trade." *Boucher*, *supra*, at 89, 95 Eng. Rep., at 56. By the 20th century, however, that rationale for the revenue rule had been supplanted. By then, as we have explained, courts had begun to apply the revenue rule to tax obligations on the strength of the analogy between a country's revenue laws and its penal ones, see *supra,* at 8–9, superseding the original promotion-of-commerce rationale for the rule. Dodge, Breaking the Public Law Taboo, 43 Harv. Int'l L. J. 161, 178 (2002); *Buchanan*, 1955 A. C., at 522–524, 528–529. The early English cases rest on a far different foundation from that on which the revenue rule came to rest. They thus say little about whether the wire fraud statute derogated from the revenue rule in its mid-20th century form.

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Granted, this criminal prosecution "enforces" Canadian revenue law in an attenuated sense, but not in a sense that clearly would contravene the revenue rule. From its earliest days, the revenue rule never proscribed all enforcement of foreign revenue law. For example, at the same time they were enforcing domestic contracts that had the purpose of violating foreign revenue law, English

courts also considered void foreign contracts that lacked tax stamps required under foreign revenue law. See *Alves* v. *Hodgson*, 7 T. R. 241, 243, 101 Eng. Rep. 953, 955 (K. B. 1797); *Clegg* v. *Levy*, 3 Camp. 166, 167, 170 Eng. Rep. 1343, 1343 (N. P. 1812). Like the present prosecution, cases voiding foreign contracts under foreign law no doubt "enforced" foreign revenue law in the sense that they encouraged the payment of foreign taxes; yet they fell outside the revenue rule's scope. The line the revenue rule draws between impermissible and permissible "enforcement" of foreign revenue law has therefore always been unclear.

The uncertainty persisted in American courts that recognized the revenue rule. In one of the earliest appearances of the revenue rule in America, the Supreme Court of New Hampshire entertained an action that required extensive recognition of a sister State's revenue laws. *Henry* v. *Sargeant*, 13 N. H. 321 (1843). There, the plaintiff sought damages, alleging that a Vermont selectman had imposed an illegal tax on him. *Id.*, at 331. The court found that the revenue rule did not bar the action, *id.*, at 331–332, though the suit required the court to enforce the revenue laws of Vermont. See *id.*, at 335–338.

Likewise, in *In re Hollins*, 79 Misc. 200, 139 N. Y. S. 713 (Sur. Ct.), aff'd, 160 App. Div. 886, 144 N. Y. S. 1121 (1913); aff'd, 212 N. Y. 567, 106 N. E. 1034 (App. 1914) *(per curiam)*, the court held that an estate executor could satisfy foreign taxes due on a decedent's estate out of property of the estate, notwithstanding a legatee's argument that the revenue rule barred authorizing such payments. 79 Misc., at 207–208, 139 N. Y. S., at 716–717. The court explained:

> "While it is doubtless true that this court will not aid a foreign government in the enforcement of its revenue laws, it will not refuse to direct a just and equitable administration of that part of an estate within its

> jurisdiction merely because such direction would result in the enforcement of such revenue laws." *Id.*, at 208, 139 N. Y. S., at 717.

These cases demonstrate that the extent to which the revenue rule barred indirect recognition of foreign revenue laws was unsettled as of 1952. Following the reasoning of *In re Hollins*, for instance, Congress might well have thought that courts would enforce the wire fraud statute, even if doing so might incidentally recognize Canadian revenue law. The uncertainty highlights that "[i]ndirect enforcement is . . . easier to describe than to define," and "it is sometimes difficult to draw the line between an issue involving merely recognition of a foreign law and indirect enforcement of it." 1 A. Dicey & J. Morris, Conflict of Laws 90 (L. Collins gen. ed. 13th ed. 2000). Even if the present prosecution is analogous to the indirect enforcement cases on which petitioners rely, those cases do not yield a rule sufficiently well established to narrow the wire fraud statute in the context of this criminal prosecution.

B

Having concluded that revenue rule jurisprudence is no clear bar to this prosecution, we next turn to whether the purposes of the revenue rule, as articulated in the relevant authorities, suggest differently. They do not.

First, this prosecution poses little risk of causing the principal evil against which the revenue rule was traditionally thought to guard: judicial evaluation of the policy-laden enactments of other sovereigns. See, *e.g.*, *Moore* v. *Mitchell*, 30 F. 2d 600, 604 (CA2 1929) (L. Hand, J., concurring). As Judge Hand put it, allowing courts to enforce another country's revenue laws was thought to be a delicate inquiry

> "when it concerns the relations between the foreign state and its own citizens . . . . To pass upon the provisions for the public order of another state is, or at

> any rate should be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are intrusted to other authorities." *Ibid.*

The present prosecution creates little risk of causing international friction through judicial evaluation of the policies of foreign sovereigns. This action was brought by the Executive to enforce a statute passed by Congress. In our system of government, the Executive is "the sole organ of the federal government in the field of international relations," *United States* v. *Curtiss-Wright Export Corp.,* 299 U. S. 304, 320 (1936), and has ample authority and competence to manage "the relations between the foreign state and its own citizens" and to avoid "embarass[ing] its neighbor[s]," *Moore*, *supra*, at 604 (L. Hand, J., concurring); see also *Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.,* 333 U. S. 103, 111 (1948). True, a prosecution like this one requires a court to recognize foreign law to determine whether the defendant violated U. S. law. But we may assume that by electing to bring this prosecution, the Executive has assessed this prosecution's impact on this Nation's relationship with Canada, and concluded that it poses little danger of causing international friction. We know of no common-law court that has applied the revenue rule to bar an action accompanied by such a safeguard, and neither petitioners nor the dissent directs us to any. The greater danger, in fact, would lie in our judging this prosecution barred based on the foreign policy concerns animating the revenue rule, concerns that we have "neither aptitude, facilities nor responsibility" to evaluate. *Ibid.*

More broadly, petitioners argue that the revenue rule avoids giving domestic effect to politically sensitive and controversial policy decisions embodied in foreign revenue laws, regardless of whether courts need pass judgment on

such laws. See *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 448 (1964) (White, J., dissenting) ("[C]ourts customarily refuse to enforce the revenue and penal laws of a foreign state, since no country has an obligation to further the governmental interests of a foreign sovereign"). This worries us little here. The present prosecution, if authorized by the wire fraud statute, embodies the policy choice of the two political branches of our Government—Congress and the Executive—to free the interstate wires from fraudulent use, irrespective of the object of the fraud. Such a reading of the wire fraud statute gives effect to that considered policy choice. It therefore poses no risk of advancing the policies of Canada illegitimately.

Still a final revenue rule rationale petitioners urge is the concern that courts lack the competence to examine the validity of unfamiliar foreign tax schemes. See, *e.g.,* Leflar 218. Foreign law, of course, posed no unmanageable complexity in this case. The District Court had before it uncontroverted testimony of a Government witness that petitioners' scheme aimed at violating Canadian tax law. See App. 65–66.

Nevertheless, Federal Rule of Criminal Procedure 26.1 addresses petitioners' concern by setting forth a procedure for interpreting foreign law that improves on those available at common law. Specifically, it permits a court, in deciding issues of foreign law, to consider "any relevant material or source—including testimony—without regard to the Federal Rules of Evidence." By contrast, common-law procedures for dealing with foreign law—those available to the courts that formulated the revenue rule—were more cumbersome. See Advisory Committee Notes on Fed. Rule Crim. Proc. 26.1 (noting that the rule improves on common-law procedures for proving foreign law). Rule 26.1 gives federal courts sufficient means to resolve the incidental foreign law issues they may encounter in wire fraud prosecutions.

IV

Finally, our interpretation of the wire fraud statute does not give it "extraterritorial effect."[12] *Post*, at 7 (GINSBURG, J., dissenting). Petitioners used U. S. interstate wires to execute a scheme to defraud a foreign sovereign of tax revenue. Their offense was complete the moment they executed the scheme inside the United States; "[t]he wire fraud statute punishes the scheme, not its success." *United States* v. *Pierce*, 224 F. 3d 158, 166 (CA2 2000) (internal quotation marks and brackets omitted); see *Durland,* 161 U. S., at 313 ("The significant fact is the intent and purpose"). This domestic element of petitioners' conduct is what the Government is punishing in this prosecution, no less than when it prosecutes a scheme to defraud a foreign individual or corporation, or a foreign government acting as a market participant. See *post*, at 8, n. 8 (GINSBURG, J., dissenting) (noting that such prosecutions of foreign individuals, corporations, and governments are domestic applications of the wire fraud statute).[13] In any event, the wire fraud statute punishes frauds executed "in interstate or foreign commerce," 18 U. S. C. §1343 (2000

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[12] As some indication of the novelty of the dissent's "extraterritoriality" argument, we note that this argument was not pressed or passed upon below and was raised only as an afterthought in petitioners' reply brief, depriving the Government of a chance to respond. Reply Brief for Petitioners 17–18.

[13] The dissent says that a scheme to defraud a foreign corporation or individual "does not necessarily depend on any determination of foreign law" and therefore "is of a different order." *Post*, at 8, n. 8 (opinion of GINSBURG, J.). That is not so. Many such schemes will necessarily require interpretation of foreign law. Without proof of foreign law, it is impossible to tell whether the scheme had the purpose of depriving the foreign corporation or individual of valuable property interests as defined by foreign law. See *supra*, at 4–5; *United States* v. *Pierce*, 224 F. 3d 158, 165–168 (CA2 2000). The fact that a prosecution might involve foreign revenue law, rather than any other type of foreign law, is relevant to whether such a prosecution is in derogation of the revenue rule, see *supra*, at 8–21, not to whether it is "extraterritorial."

ed., Supp. II), so this is surely not a statute in which Congress had only "domestic concerns in mind." *Small* v. *United States*, *post*, at __ (slip op., at 3) (internal quotation marks omitted).

* * *

It may seem an odd use of the Federal Government's resources to prosecute a U. S. citizen for smuggling cheap liquor into Canada. But the broad language of the wire fraud statute authorizes it to do so and no canon of statutory construction permits us to read the statute more narrowly. The judgment of the Court of Appeals is affirmed.[14]

It is so ordered.

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[14] Petitioners argue in a footnote that their sentences should be vacated in light of *Blakely* v. *Washington,* 542 U. S. ___ (2004). Brief for Petitioners 26, n. 29. Petitioners did not raise this claim before the Court of Appeals or in their petition for certiorari. We therefore decline to address it. See, *e.g., Lopez* v. *Davis,* 531 U. S. 230, 244, n. 6 (2001) (declining to address "matter . . . not raised or decided below, or presented in the petition for certiorari"); *Whitfield* v. *United States,* 543 U. S. ___ (2005) (affirming federal convictions despite the imposition of sentence enhancements, see Brief for Petitioners therein, O. T. 2004, No. 03–1293, etc., p. 7, n. 6).