

**Supplementary submission to the
Productivity Commission's *Inquiry
into Australia's Gambling Industries***

from

The Geelong Catholic Social Justice Committee

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(prepared for the Committee by Dr. Michael Leahy)

Introduction

Our Committee thanks the Commission for the opportunity of commenting on its *Interim Report*. The Commission deserves praise for thoroughness and detail of its Inquiry, but there are a number of points which, we believe, it should reconsider.

Points for reconsideration

A first and general consideration is that in the State of Victoria, at least, the gambling policies of the government were an important issue in the recent election. The stripping of the Kennett government of its entire fifteen seat majority must be recognized as being in no small part a protest vote against that government's gambling policies. The State Opposition made a feature of its campaign its promise to ban 24 hour gaming outside the metropolitan area, and its condemnation of government secrecy surrounding the issue of the Casino licence. The Productivity Commission's final policy recommendations on gambling would be out of keeping with the thinking of the Victorian community if they neglected the implications of the election results.

Our second point concerns the framework of analysis employed by the Commission. We submit that the Commission should acknowledge the limitations of the economic framework of analysis for assessing the social effects of gambling. The 'public choice' theory, on which these effects are 'externalities', though derived from economic theory, involves philosophical and psychological assumptions as well. Among those assumptions are:

- (1) that human beings are reducible to rational calculators of self-interest;

(2) that the only moral good at stake in the assessment of the place of gambling in the life of the community is the satisfaction of the consumption preferences of the majority provided only that such satisfaction does not interfere intolerably with other preferences on the part of other citizens;

(3) that the role of government is limited to the facilitation of such preference satisfaction.

These assumptions, and the theory on which they rest, make so called market rules the rules for moral and political life of society as well. We submit that this is an evident inversion of the role that economic rules should play in the life of a free society, and that this 'public choice' framework of analysis should give way to a framework which inverts this order of dominance, a framework in which the rules of the market are subject to the demands of the common good of which the state is the proper guardian.

We reject assumption (1) on the following grounds:

- I. By reducing rationality to the calculation of individual self-interest, this assumption exaggerates the tension between the claims of the individual good and the common good. The pioneers of liberal theory did not intend that individual rights should supplant the common good in social life. Referring to the theories of John Locke, Condorcet and John Stuart Mill, one recent liberal commentator remarked: 'In their view maximizing civil liberty and political equality was the most effective way of creating a flourishing social union as well as a way of dismantling old oppressions and inequities' (Spragens 1995, p. 42). Social union is threatened, not fostered,

by the assessment of a social and moral issue such as gambling on what purports to be a purely economic principle. If, as this principle assumes, human beings are reducible to maximisers of their own individual interests, social bonds, voluntary though they may be, are reduced to instruments in that maximisation process. That this is an unacceptable exaggeration of the claims for individual interests can be seen from the acknowledgment by liberals and communitarians alike that the success of the market itself is dependent upon the existence of more substantial bonds than these between members of a free society¹. Without a commitment to the good of the society as a whole, what reason could citizens have for obeying laws which protect that good but interfere with their individual good when disobedience would escape detection?

II. By accepting such a limited view of human rationality, the Commission places itself in a position of having on the one hand to take seriously such grotesque parodies of the notion of rationality as the one appealed to in the ACIL submission (155): the notion of ‘rational addiction’, and on the other to neglect insights into the nature of rationality from the communitarian perspective. The notion of rational addiction is arrived at by allowing nothing else to count as a measure of rationality but choosing what one wants. But the Commission has already expressed skepticism that ‘choosing what one wants’ gives a full account of human rationality in its observation that the supply of gambling opportunities is different from the supply of ice cream for purchase. Both consumers and suppliers of gambling opportunities, in other words, are confronted with more than a

calculation of self-interest. Rational judgment on their parts entails also consideration of the features of gambling that distinguish it from the sale and purchase of ice cream, features which, we submit, cannot be reduced, without intolerable strain on the notion of rationality, to rational calculations of self-interest. For the consumer the hazardous nature of gambling demands that s/he consider the harm losses might do to dependants, for example. It would be perfectly rational, we submit, for the consumer to judge that to continue to play the EGM at a particular point would be morally wrong, despite her desire to do so. On the 'public choice' account of rationality, such a decision could only be rendered rational by regarding it as an expression of a stronger desire, thus denying any measure of morality save personal desire and any difference even in the quality of particular desires. *Mutatis mutandis*, the supplier faces similar questions. It would be perfectly rational for a supplier of EGM facilities, for example, to judge that the public interest required that s/he not open the 24 hours permitted by her licence when it was obvious that the absence of a break contributed to excessive gambling. The same strains would have to be imposed on any common sense notion of rationality to accommodate the supplier's position within the 'public choice' notion.

III. By accepting this theory of rationality, the Commission is embracing not an economic theory but an ethical theory. That this notion of rationality, and the 'public choice' theory of which it forms part, is an ethical rather than an economic theory is evident from the fact that it is used not only to *explain* consumer behaviour but also to *prescribe* it. This prescriptive aspect of the

'public choice' theory's notion of rationality is derived from the concept of the 'sovereign consumer'. Consumer sovereignty implies that consumer demand for a 'product' like EGM gambling is an expression not only of an *empirical fact* but also of a *moral right*, barring countervailing 'externalities'. The first criticism of this claim is thus that it fails to show how a proposition about what *ought to be* can logically be derived from a proposition about what *is*. The second criticism is that the notion of the 'sovereign consumer' is a myth which idealises the rational and moral capacities of human beings. According to this ideal, human beings by nature possess not only the rational capacity always to know what is right, but also the moral capacity to do it. We submit that, on a less arbitrarily restricted notion of rationality, rational people recognise (a) their own limitations in regard to both these capacities, and (b) the difference social factors such as upbringing, education, socio-economic status can make to these capacities in individuals. Such people will therefore temper their enthusiasm for the perfectionist ideal implicit in the myth of the 'sovereign consumer' with such realism when that myth is invoked to support the liberalization of hazardous activities like electronic gaming, for example.

We reject assumption (2) for the following reasons:

- I. There is a clear common good to be served in protecting communities that have shown themselves, on the evidence presented in the *Draft Report*, to be vulnerable to problem gambling. When one third of the gambling market is made up of the losses of problem gamblers, it is clear that the

industry is heavily dependent on the exploitation of human weakness. Protection of these people from excessive exposure to the lure of gambling is a gesture of solidarity with them and those who suffer as a result of their losses, not an act of paternalism. Indeed, the appeal to the right of the individual to inflict such harm on self and family in the face of this statistic should be seen as a rationalization of predatory self-interest on the part of the industry and governments advancing it. We find this statistic truly alarming, as much as anything else because it confirms the experience of St Vincent de Paul members at the local level. Addictions such those induced by the ‘pokies’ corrode the fragile bonds of local communities, and such corrosion should constitute for an Inquiry such as this a moral consideration countervailing the right to satisfy individual consumption preferences.

II. Acceptance of this assumption would overlook the fact that gambling is by its very nature a *hazardous* occupation. While it remained a recreational activity, its hazards could be contained within socially and ethically acceptable limits. However, its elevation to the status of a major industry has led both to a dramatic bursting of those limits and an accompanying denial of the hazards. An ethical theory which masquerades as an economic theory and restricts moral considerations concerning particular activities to the individual right to satisfy consumer preferences is not an adequate theory for either ethical or economic assessment of gambling. We submit that, rather than merely apply the ‘public choice’ theory to this industry, the Commission must review the value of this theory as a framework for assessing problematic industries such as the gambling industry. We also

submit that the evidence before the Commission is sufficient to warrant, indeed that it demands, that the gaming industry in particular be adjudged a *hazardous* industry, and as such requiring safeguards above and beyond those applying, for example, to the ice cream industry.

We also reject assumption (3) (that the role of government is limited to the facilitation of such preference satisfaction) for the following reasons:

- I. Limitation of the role of government in this way implies that society is no more than a contractual arrangement for facilitating preference satisfaction on the part of individuals by nature unencumbered by any other social bonds. This view of society has been repudiated by liberals and communitarians alike². We have already remarked above that contractual bonds to facilitate the pursuit of individual self-interest would provide an insufficient basis for the social unity necessary for the survival of any society. That unity requires in addition a commitment on the part of its citizens to the welfare of the group, a commitment sufficient to motivate observance of the group's laws even when disobedience, where it served one's individual interest, would go undetected. The role of government in such a society cannot therefore be limited to the facilitation of the satisfaction consumer preferences, but must extend to the protection of the good of all.

- II. It is a matter of grave concern to us that governments generally, and the Victorian government in particular, have compromised their fundamental role as guardians of the common good by taking vested interests in the

gambling industry. All governments have become reliant in some measure on revenues from gambling taxes. The Victorian government, relying as it now does on this source for 14% of its total revenue, has taken on the role of active promoter of this industry. Its prominence in Crown Casino promotions and willingness to do favours for the Casino's proprietors when the latter face commercial adversity constitute in our view a truly scandalous and cynical compromise of its role as guardian of the common good. As we indicated in our earlier submission, the Kennett government's commitment to its interest in the gambling industry rather than to the good of all its citizens was furthered evidenced in its strenuous efforts to protect the gambling industry from unfavourable advertising, from embarrassment by the regular and full publication of data from gambling counselling services and from the control of venues and licensing conditions by local governments and statutory bodies like the Victorian Liquor Licensing Commission. Since these issues featured prominently in the recent Victorian election campaign, the Commissioners must take account in their Final Report of the Victoria electorate's judgment on the Kennett government's interpretation of its role in relation to gambling.

We submit that the judgment of the Victorian people is that the Kennett government compromised its role of guardian of the common good to a unacceptable extent. Confronted with the devastating harm done by addiction to EGMs, ordinary people are not impressed by appeals what they see as abstract intellectual ideals of individual freedom. When this ideal is

expressed as ‘consumer sovereignty’, they are inclined, and we submit entitled, to regard it as a disguised form of special pleading on the part of those who profit from the losses of gamblers.

Conclusion

We submit that on the evidence before it the Commission has warrant for the following conclusions and recommendations:

1. that, in view of the fact that gambling expenditures are not labelled ‘for gambling’, the economic benefits from the current massive expansion of a recreational activity into a major industry are at best dubious;
2. that the gambling industry, and in particular the electronic gaming industry, is a *hazardous* and should therefore be subjected to controls not applicable to other classes of industry;
3. that these controls include the setting up statutory authorities for the specific purpose of issuing and supervising the exercise of gambling licenses (thus removing this function from the jurisdiction of bodies set up for other purposes such as the Victorian Liquor Licensing Commission);
4. that these controls also include restoration to local government of the planning powers necessary to ensure that local communities have the final say in whether they get gaming venues in their neighbourhoods and under what conditions;

5. that these controls also include strict prohibitions on measures to entice gamblers to remain in gaming centres at times when responsibilities like picking up children from school would require them to leave;
6. that these controls also include bans on 24 hour gaming venues;
7. that these controls also include requirements that licensees provide full information about the odds of winning on all EGMs;
8. that these controls also include compulsory signs on all EGMs and in all venues warning that gambling is a hazardous occupation, and detailing sources of help for problem gamblers;
9. that these controls also include a requirement that governments devote a fixed percentage of gambling revenues to the rehabilitation of problem gamblers;
- 10.that these controls also include a requirement governments disclose annually full details of counsellor experience of problem gambling and that governments impose no restraint on the freedom counsellors to comment publicly on their experience;
- 11.that governments like the Kennett government in Victoria have, by the degree to which they have taken a vested interest in the gambling industry, seriously compromised their role as protectors of the common good, and should divest themselves of that interest to the fullest extent possible;
- 12.that governments should take immediate measures to reduce their dependence upon gambling taxes, such measures to include re-negotiation of income tax reimbursement agreements with the Commonwealth.

Finally, we commend the Commission for the thoroughness of its Inquiry, and express our gratitude for the opportunity of making our submissions. We stress that we do not oppose gambling as such but, since we regard it as a hazardous activity, we believe that its growth and operation as an industry rather than a recreational activity, if it is to be permitted, must be controlled in a way that protects the good of the community as a whole. The notion of 'consumer sovereignty' should be seen as a concept derived from an ethical theory masquerading as an economic theory, and disguising special pleading on the part of those who profit from the weaknesses of their fellow citizens. We find it morally intolerable that a situation should be allowed to continue in which one third of the total gambling market should consist of the losses of problem gamblers.

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¹ See John Rawls' Section 79, 'The idea of social union' in his book *A Theory of Justice* (Rawls 1972) and Alasdair MacIntyre's criticism (MacIntyre 1988, p. 337ff).

² Representative works include on the communitarian side Michael Sandel's (Sandel 1998), Alasdair MacIntyre's (MacIntyre 1988), and on the liberal side Will Kymlicka's (Kymlicka 1989).