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The Poker-machine State in Australia: A Consideration of Ethical and Policy Issues

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Abstract The 'poker-machine state' is a description of a state of affairs that exists in Victoria, Australia. We can describe this state in part by calculating one or another index to estimate the harmful impact of poker machines (high-intensity electronic gaming machines or EGMs). The nature of the poker-machine business means that this impact must occur. Full description, however, requires us to describe four additional aspects of the poker-machine state. First, heavy users of poker machines necessarily lose control. Second, the poker-machine state necessarily causes and constitutes harm. Third, our governments perpetrate the harm. Fourth, the agents of harm, business corporations, profit from the harm. The various aspects of this description provide evidence for the conclusion that the poker-machine state is unethical.

Keywords Gambling · Ethics · Social policy · Poker machines · EGMs

Introduction

This article presents a case that the 'poker-machine state' is a description of an unethical state of affairs. In the first section I will describe this state partly by using an equation from which we might develop an index of impact on heavy users. These users the 'industry' depends on for its super-profits. Governments rely on them for revenues. The equation is:

$$I_{\mathrm{h}} = \left(0.6\sum L \Big/ 0.15u\sum P\right)\Big/ S$$

This equation describes what necessarily must be the financial impact of poker machines (high-intensity electronic gaming machines or EGMs) in the Australian State of Victoria and its capital city Melbourne. "How the Numbers Add up to an Unethical State or Affairs" will also contain an explanation of how this equation might function in a factually grounded exercise in applied ethics.

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"A Social Geography of Poker Machines, Losses and Impact" contains an application of the approach developed in "How the Numbers Add up to an Unethical State or Affairs" to the data of metropolitan Melbourne. It will offer a geographical representation of the distribution of machines and losses. This representation will demonstrate the concentration of industry and Government on the relatively disadvantaged.

"Unethical, Unjust and Unconscionable" extends the description of the poker-machine state by discussing briefly four of its additional aspects. First, the section provides evidence that heavy users of poker machines necessarily lose control of their actions. Second, it shows how the very nature of poker-machine provision necessarily causes and constitutes harm. Third, it discusses the moral implications of the fact that our governments perpetrate the harm. Fourth, it argues that it is unconscionable for the agents of the harm, business corporations, to profit from it.

Readers might wonder whether my use of words such as 'harm', 'perpetrate', 'unethical' and 'unconscionable'—and even 'impact', 'disadvantage' and 'super-profits'—is more polemical than it is scholarly. I hope to prove that it is not. Indeed I hope to convince readers through argument and evidence that these terms are accurate descriptors. In particular, to support my claims, I will offer evidence in "How the Numbers Add up to an Unethical State or Affairs" from a leaked report by the gambling corporation Tattersall's and from a legal opinion in "Unethical, Unjust and Unconscionable" concerning 'unconscionable conduct' under Australia's *Trade Practices Act*.

How the Numbers Add Up to an Unethical State of Affairs

Those schooled in traditional behaviorist (or 'positivist') social science will disagree with the very thought that an equation might have ethical content. "Numbers are about facts, and values (or ethics) come from somewhere else! Economics, psychology and sociology should be scientific. They must be value-free. An 'ought' cannot derive from an 'is'." In the first place it should strike anyone as odd that the traditional position could not even be stated without using value words ('should be,' 'must' and, perhaps, 'scientific'). Nonetheless by the end of this section I hope to show how hopelessly confused it is—not to say undesirable—to segregate facts and values (Doughney, 2004; 2005).

What then is the equation in the introduction all about? The initial answer is that it represents the end-point of almost a decade of investigative empirical research. As with a jigsaw puzzle, the pieces were assembled as new data, information and connections emerged. The research did not rely on complex statistical inference. Rather it has been more of a factually based exercise in reasoning: inference to increasingly better causal explanations.

To understand the equation we must define its terms. Recall that the equation is:

$$I_{\mathrm{h}} = \left(0.6\sum L \Big/ 0.15u\sum P\right)\Big/ S \tag{1}$$

The first term (I_{h}) stands for *impact on heavy users*. It can be a dollar figure or a dollar figure converted into a ratio or index. The second term (ΣL) simply stands for total losses per year for a State or some other geographical entity such as a local government area (LGA). The third term (u) stands for the proportion of the adult population of the geographical entity or area who use poker machines in a year. The next term (ΣP) is the

adult population of the entity. The fifth and final term (S) is a number that ranks the socio-economic status (SES) of the area, from highest status to lowest. Rearranging Eq. 1 gives:

$$I_{\mathrm{h}} = (0.6/0.15) \times \left(\sum L \Big/ u \sum PS\right) \tag{2}$$

Where do the figures 0.6 and 0.15 come from? In the relatively distant past indiscrete comments by executives from the gambling giants Tattersall's or Tabcorp revealed that 80% of total losses derive from 20% of poker-machine users. Then in 2003 an anonymous whistleblower from within Tattersall's leaked data concerning a card-based loyalty membership scheme tested across 13 venues in 2002.

The leaked document gave solid internal data on questions such as: 'Who uses poker machines? Who loses? How much do particular users lose?' One might have thought that such hard data were already available: indeed were essential to inform those making public policy decisions. Yet such direct and reliable evidence had remained elusive. Some revelations were:

1. Tattersall's regards members of its trial scheme as a reasonable approximation of poker-machine users in general (Tattersall's, 2002, p. 42). The data thus let us make informed judgments about poker-machine activity in general.
2. Tattersall's make it plain that it is fearful about regulations that might force it to reveal such internal data to the public (Tattersall's, 2002, p. 7).
3. The 'advantage' scheme explicitly offers already 'high turnover' or heavier users special 'rewards' designed to keep them at the machines longer (Tattersall's, 2002, p. 45).
4. The report designates women as main the target market, because about two-thirds of revenue comes from women. Therefore, it says, 'promotions should generally not be based on the preferences of male customers' (Tattersall's, 2002, p. 26).
5. Users are mainly in the older age groups, especially in the high loss 46–55 cohort (Tattersall's, 2002, p. 43). Daytime users lose an equal, if not greater amount, than do nighttime users (Tattersall's, 2002, p. 44). This fits with the female and older user profile, but it undermines the image that 'a harmless night out at the pokies' is the main source of the industry's revenue.

Most significantly the document stated: '[W]e derive enormous value'—57% of total revenue—'from a very small group of customers,' namely the 15% who lose '$100 plus per visit.' Moreover 'those 34% of members who spend [i.e., lose] greater than $50 per visit contribute over 82% of value.' It also revealed that the 15% spends an average of 153 min 'playtime' per visit, visits more than once per month and visits more than one venue (Tattersall's, 2002, p. 45). That is, approximately 60% of total losses derive from 15% of users who lose more than $100 each 2 h and 33 min at the machines. These, of course, are heavy users by any standard.

Now, if this 15% lose 60% of the total, then they must lose (60/15) or (0.60/0.15) times the average amount lost. The answer is 4, and it just happens to equal 80 divided by 20 (the earlier 'rule of thumb'). However, we also know that not all adults use poker machines in any year. In fact, the *maximum* proportion of adults who do in Victoria is about 40%. This 40% (or 0.40) corresponds to the term (u) in our equation. If we divide 4 by 0.40 we get the result that heavy users lose 10 times the average annual loss per adult in the State. Remember, too, that this will be a *minimum*. If, for example, the participation rate were one-third (33.3%) then heavy users would be losing 12 times the average.

Table 1 Victorian Population and Poker-machine Data 2004–2005

	2005 Population Projection	2005 Population Projection (18+)	Venue Number	Machine Number	Total Net Losses 2004–2005
Metropolitan Total[a]	3,641,822	2,774,567	337	19,848	$1,882,414,518.44
Victorian Total	5,024,440	3,870,537	523	27,124	$2,393,030,965.88

Source: Victorian Commission for Gaming Regulation (2005)

[a] excludes City of Melbourne

Tables 1 and 2 present the actual 2004–2005 population and poker-machine data for Victoria. Using these data we can estimate, using the method captured by the equation above, how much heavy users are currently losing. This amount is between approximately $6,500 and $8,000 for average metropolitan users and $6,000 and $7,500 for average Victorian users. These are large sums by any measure.

These are the losses of the 15% of users—or the 5–6% of the adult population, 200,000 or so Victorians—that comprise 60% of the industry's revenues. These losses comprise 60% of the Government's share in this industry ('taxes'). They come from people who on average lose more than $100 per visit and spend 2 h and 33 min at the machines when they do. If they lost $100 each time they would have to go to a venue between 60 and 80 times a year—i.e., between 1 and 2 times per week. This adds up to average losses of between $120 and $150 per week. Some, of course, will lose considerably more.

Another way of saying this is that, in order for it to generate its $2.4 billion take each year, this industry requires a relatively small number of users to lose demonstrably more than most people could afford to lose. This *concentration of losses* must necessarily cause harm to those individuals, their families, their associates and their communities. It is demonstrably not the stuff of the 'harmless flutter.' The data by themselves tell us this. Researchers and policy makers, too, live in this society. We know implicitly what such data mean. They describe an unethical state of affairs.

Unfortunately, however, this description is incomplete. In the next section I will offer more data, and these will demonstrate that the losses are concentrated disproportionately in lower-income communities. In the next section I will also complete the work of the equation above by developing an index of poker-machine impact by area.

Table 2 Victorian Poker-machine Data per Adult and Heavy User 2004–2005

	Venue Number per Adult (18+) 2004–2005 (2005 Population Projection)	EGM Number per Adult (18+) 2004–2005 (2005 Population Projection)	Total Net Losses per Adult (18+) 2004–2005 (2005 Population Projection)	Total Net Losses per Heavy User 2004–2005 (with 40% Rate)	Total Net Losses per Heavy User 2004–2005 (with 33.3% Rate)
Metropolitan Total[a]	0.12	7.01	664.77	$6,785	$8,141
Victorian Total	0.14	7.01	618.27	$6,183	$7,419

Source: Victorian Commission for Gaming Regulation (2005)

[a] excludes City of Melbourne

A Social Geography of Poker Machines, Losses and Impact

One of the first facts about the poker-machine industry in Victoria to emerge was that it targeted, to use the marketing vernacular, users in communities of relatively low socio-economic status (SES). It did so in practice by placing more machines per capita in these areas than it did in areas of higher SES (see e.g., Productivity Commission, 1999, chapter 10.5). In earlier days industry representatives would also openly say that this was what they were doing, describing the industry as offering a 'blue collar' form of entertainment (Tabcorp executive cited by Doughney, 2002, p. 21). One put it bluntly: 'This is a poor man's sport, playing gaming machines. It is simple, unstimulating and non-interactive but more poor, lesser educated like it more than do rich, educated people' (Clubs Victoria representative cited by Productivity Commission, 1999, p. 10.43). Industry representatives today are far less candid about their focus. Nonetheless the facts are still there for all to see. The Victorian Government's 'regional capping' policy, which redistributed a small number of machines from some low-SES areas, has predictably failed to make a tangible difference (O'Neil, Whetton, Dolman, Dolman, & Giannopoulus, 2005).

Figures 1, 2, 3 and 4 give an overview of the problem in metropolitan Melbourne. The first merely shows metropolitan Melbourne's local government areas (LGAs). Figure 2 depicts four levels of poker-machine density, measured as machines per 1,000 adults by LGA. The levels are rather arbitrary, but they are designed to distinguish high and low according to the citywide average and to emphasize the two highest-density LGAs. Figure 3 depicts four levels of socio-economic status, measured by the Australian Bureau of Statistics (Australian Bureau of Statistics (ABS), 2003) socio-economic indexes for areas (SEIFA).

Fig. 1 Metropolitan Melbourne local government areas. Source: Victorian Department of Infrastructure

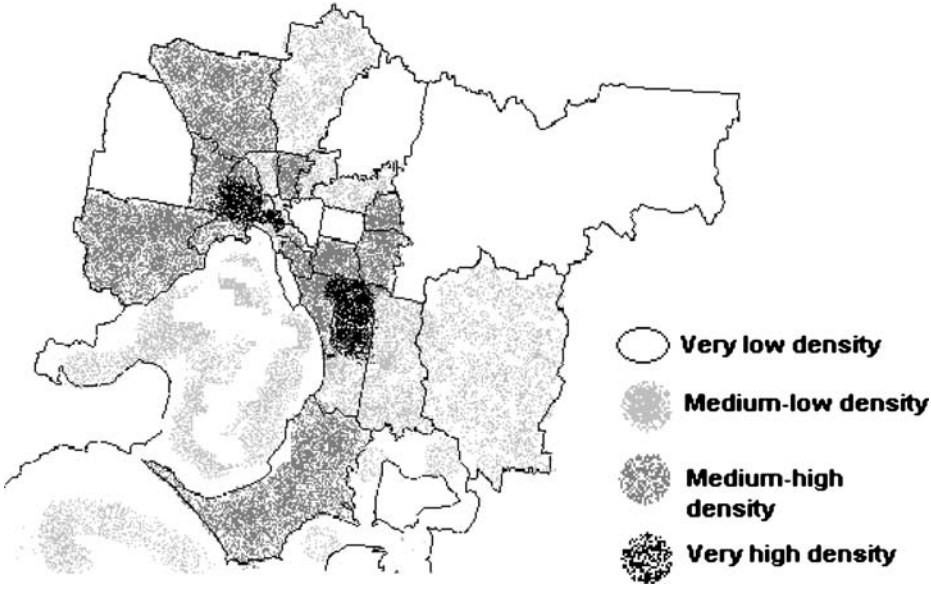

Fig. 2 Poker-machine density metropolitan Melbourne 2004–2005. Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation (2005)

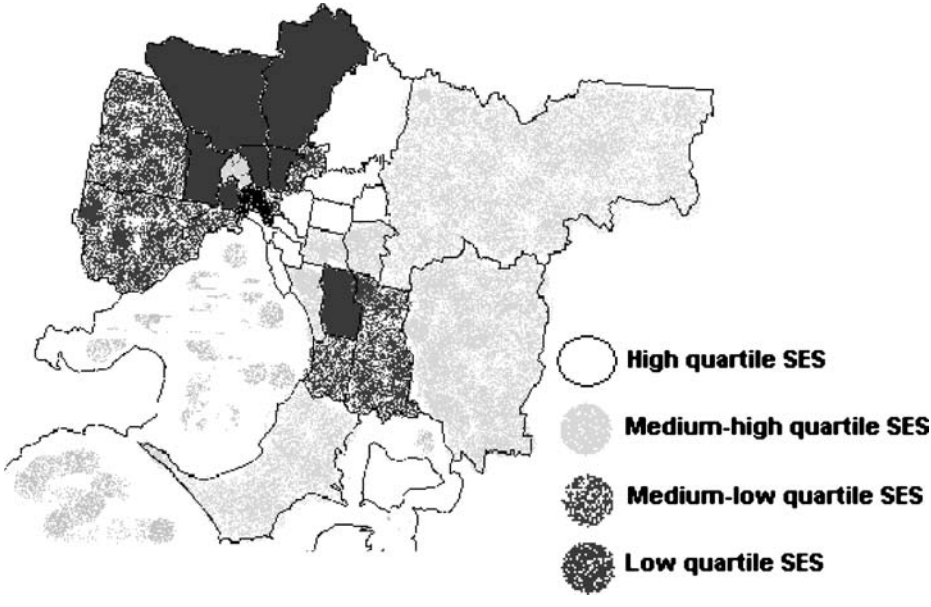

Fig. 3 Socio-economic status (*SES*) metropolitan Melbourne 2004–2005. Source data: Victorian Department of Infrastructure, Australian Bureau of Statistics (ABS) (2003)

Fig. 4 Poker-machine density and SES metropolitan Melbourne 2004–2005. Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation (2005); Australian Bureau of Statistics (ABS) (2003)

Figure 4 overlays the SES depiction of metropolitan Melbourne with its poker-machine density distribution.

Clearly the machines concentrate in the less affluent western, northwestern and northern regions. Their density is sparse in the more affluent eastern, outer-eastern and northeastern regions. The picture is less clear in the southeast, with the exception of Bayside and, in contrast, Mornington Peninsula. Figures 5 and 6 make the same points in a more traditional way. Losses per adult in each LGA are on the vertical axis in both figures. In Fig. 5 the LGAs are shown on the horizontal axis from lowest to highest machine density, while in Fig. 6 they are shown from lowest to highest SES. The conclusion is stark: low-SES areas have generally higher machine densities; the higher the machine density the higher the loss per adult; consequently losses per adult are higher in low-SES areas.

Now Figs. 1, 2, 3, 4, 5 and 6 make it obvious also that the losses per adult in the lowest-SES LGAs are much higher than the State or metropolitan averages. Furthermore they are more than five times the losses per adult in the richest LGAs. Using the method derived from the equation in the preceding section we can begin to see just how devastating the losses per adult might be in the lower-income LGAs for those who are heavy users. Recall that it is a simple matter of multiplying the average loss per adult in an area by 10 or by 12. Table 3 gives the results.

This calculation assumes for ease of exposition that the proportion of the population in each LGA that uses the machines in any year (u) is the same as that for metropolitan Melbourne as a whole. Actual participation rates, of course, will vary across LGAs.

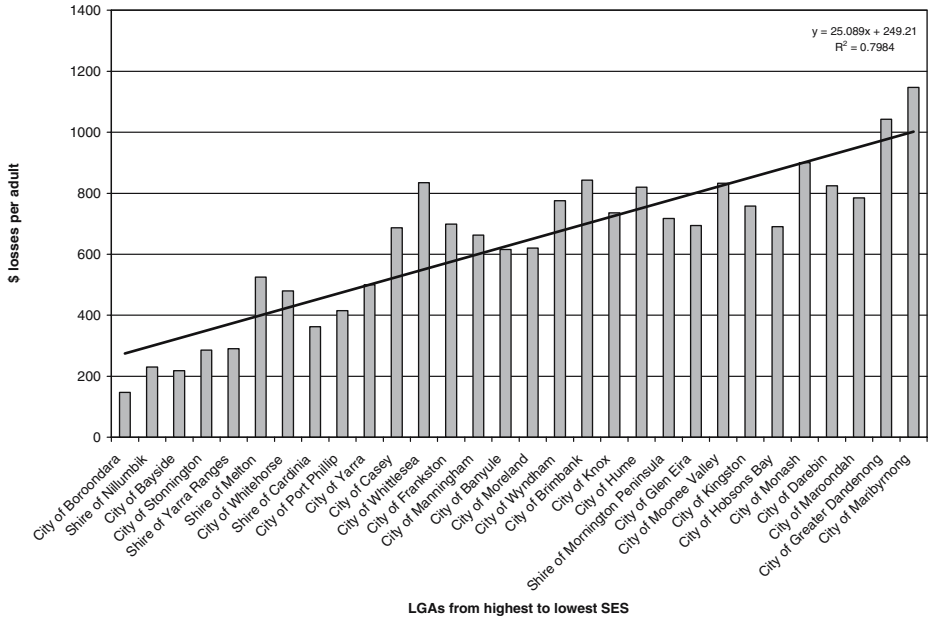

Fig. 5 Losses per adult per year by LGA from lowest to highest density 2004–2005. Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation (2005); Australian Bureau of Statistics (ABS) (2003)

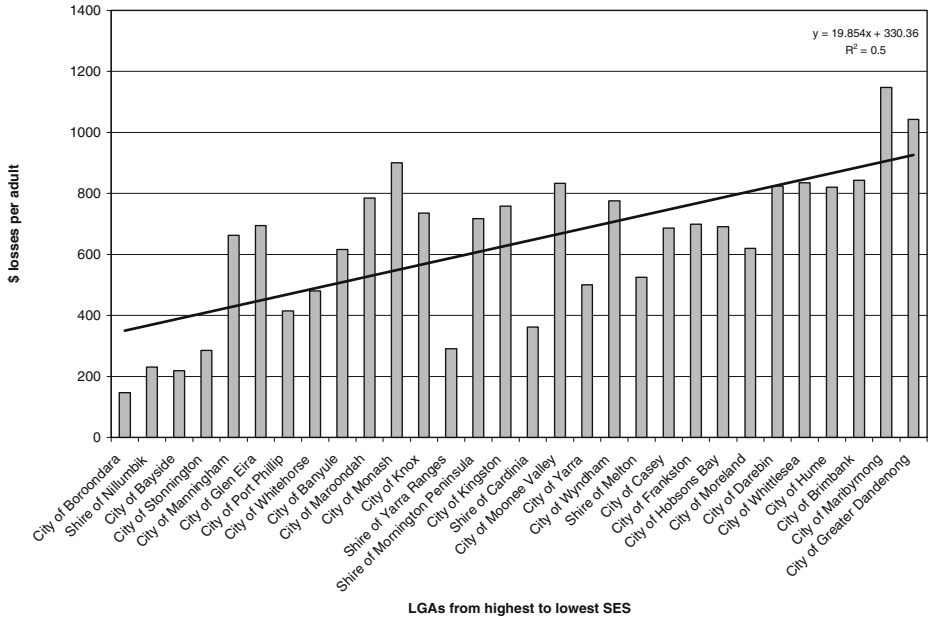

Fig. 6 Losses per adult per year by LGA from lowest to highest SES 2004–2005. Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation (2005); Australian Bureau of Statistics (ABS) (2003)

Table 3 Losses per Adult and Heavy Users by Melbourne Metropolitan LGA

City/Shire	Losses per adult 2004–2005	Losses per Heavy User 2004–2005 (with 40% Rate)	Losses per Heavy User 2004–2005 (with 33.3% Rate)
City of Maribyrnong	1,147.29	11,472.90	13,767.48
City of Greater Dandenong	1,042.47	10,424.70	12,509.64
City of Monash	900.14	9,001.40	10,801.68
City of Brimbank	842.96	8,429.60	10,115.52
City of Whittlesea	834.46	8,344.60	10,013.52
City of Moonee Valley	832.89	8,328.90	9,994.68
City of Darebin	824.20	8,242.00	9,890.40
City of Hume	820.48	8,204.80	9,845.76
City of Maroondah	784.78	7,847.80	9,417.36
City of Wyndham	775.71	7,757.10	9,308.52
City of Kingston	758.37	7,583.70	9,100.44
City of Knox	735.85	7,358.50	8,830.20
Shire of Mornington Peninsula	716.99	7,169.90	8,603.88
City of Frankston	698.75	6,987.50	8,385.00
City of Glen Eira	694.34	6,943.40	8,332.08
City of Hobson's Bay	690.88	6,908.80	8,290.56
City of Casey	686.61	6,866.10	8,239.32
City of Manningham	662.44	6,624.40	7,949.28
City of Moreland	620.07	6,200.70	7,440.84
City of Banyule	615.89	6,158.90	7,390.68
Shire of Melton	525.15	5,251.50	6,301.80
City of Yarra	500.97	5,009.70	6,011.64
City of Whitehorse	480.54	4,805.40	5,766.48
City of Port Phillip	415.41	4,154.10	4,984.92
Shire of Cardinia	361.94	3,619.40	4,343.28
Shire of Yarra Ranges	291.18	2,911.80	3,494.16
City of Stonnington	285.53	2,855.30	3,426.36
Shire of Nillumbik	230.72	2,307.20	2,768.64
City of Bayside	218.73	2,187.30	2,624.76
City of Boroondara	146.95	1,469.50	1,763.40
Metropolitan average	678.45	6,784.53	8,141.44

Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation (2005); Australian Bureau of Statistics (ABS) (2003)

However, the available evidence (see McMillen & Marshall, 2004, p. 57) shows that the average proportion of the variance in participation corresponding to changing SES is relatively small (about 13%, which is to say that the *R*-square is 0.13). It is also important to add at this point that Livingstone has comprehensively refuted the

> ... the idea articulated by some gambling industry advocates and others that ... [the distribution of poker machines] in Victoria is explicable at least in part by the comparative over-abundance of venues for poker machine placement in disadvantaged areas of Melbourne, and the scarcity of venues in the more affluent eastern suburbs (Livingstone, 2001, pp. 52–4).

Indeed Livingstone's data show that, while the six highest-SES LGAs contained fewer venues per capita than did the six lowest-SES LGAs, the former had a higher population. Yet, in the high-SES six, only one-quarter of venues contained machines. In contrast about 40% of venues in the six lowest-SES LGAs had machines. There was ample room for expansion in the more affluent suburbs had Tattersall's and Tabcorp chose to target them. Machine numbers in areas were not determined by venue numbers but by placement decisions.

The average loss per heavy user in the LGAs of Greater Dandenong and Maribyrnong, the two lowest-SES Victorian LGAs, is between about $10,500 and $13,500. Therefore not only does this industry require a relatively small number of users to lose demonstrably more than most people could afford to lose, but it also targets its machines so that poorer users lose even more. This *additional concentration of losses* based on already existing disadvantage must inevitably, of necessity, cause considerably greater harm. This socio-economic concentration of losses is not the stuff of the 'harmless flutter.' We, too, live in this society. The data, once known, become ethically self-explanatory.

Understanding the implications of the simple intuition that poorer people can less afford to lose because they have less to lose gives meaning to the final feature of the equation from the preceding section. Recall that the equation is:

$$I_{\mathrm{h}} = (0.6/0.15) \times \left(\sum L \Big/ u \sum PS \right) \tag{2}$$

which may be rewritten, to take account of the proportion of the adult population who use poker machines in a year (u), as:

$$I_{\mathrm{h}} = (10 \text{ or } 12) \times \left(\sum L \Big/ \sum P \right) \Big/ S \tag{3}$$

Equation 3 can be stated in plain English. An index of poker-machine impact on heavy users in an area may be defined as being 10–12 times the average loss per adult per year divided by an index of socio-economic status. If we conveniently use the SEIFA index of disadvantage as the divisor, and then convert the result to an index—with the least affected area taking the value 100—we obtain the rankings set out in Fig. 7.

Finally, we also know that a close connection exists between the socio-economic status of users and the regional distribution of losses. The reason is that people use poker-machine venues close to their homes: mostly within a couple of kilometers (see e.g., KPMG Consulting, 2000). That is, the losses come from people who live in the areas around the venues. These people will themselves, on average, have the socio-economic profile of their areas.

Unethical, Unjust and Unconscionable

In this section I will consider briefly four additional aspects of the poker-machine regime in Victoria. They are: (1) heavy users necessarily lose control; (2) the nature of poker-machine provision necessarily causes and constitutes harm; (3) governments perpetrate the harm; and (4) the agents of the harm, business corporations, profit from it.

I will present below normative positions. These positions, however, are not mere interpretations of the facts that we draw from a separate faculty of mind containing opinions or values. Rather they comprise part of the ensemble of facts we describe and analyze. We

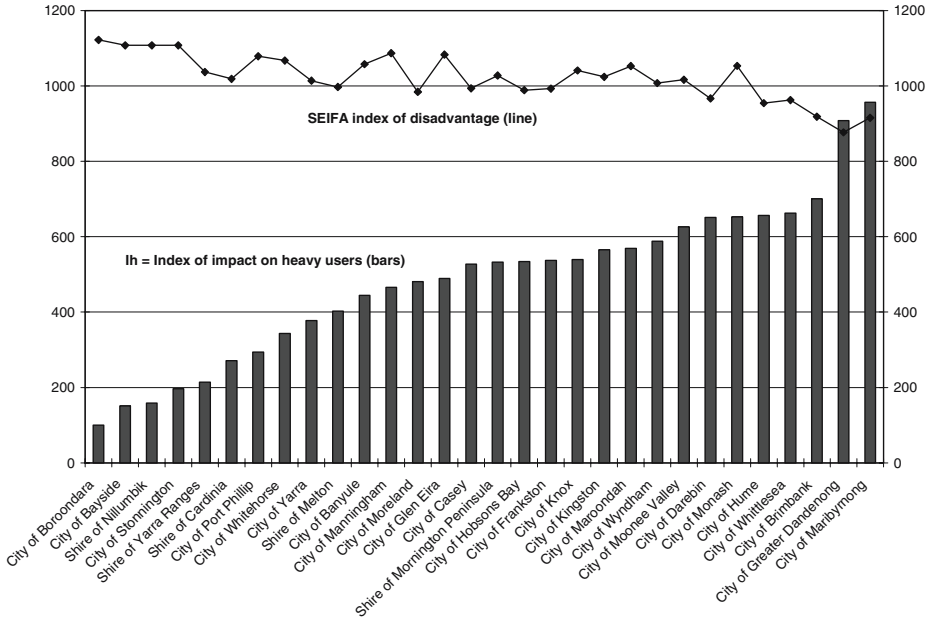

Fig. 7 Index of impact on heavy users of EGMs by Melbourne metropolitan LGA. Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation (2005); Australian Bureau of Statistics (ABS) (2003)

should enquire as much to find moral as we do other data. Indeed we can even use financial data to make self-evident points with moral content, as was the case in sections one and two. Therefore the arguments below, in describing and analyzing the facts from the four additional perspectives, use ethical/moral terms in their repertoire. The power of the arguments in each case lies entirely in their faithfulness to the evidence and in the realism of their ethical and other claims.

The first fact to understand is that every 'game' or use of a poker machine constitutes a transaction. It seems obvious to say this, but many contributors to the debate conveniently forget that a transaction has two (or more) sides or parties. To concentrate exclusively or mainly on the phenomenology of problem gambling and 'the' problem gambler is the most transparent form of this error. The industry and Government, of course, have an interest in perpetuating a one-sided focus. It diverts attention from their respective roles. Therefore, on the principle that a reasonable transaction requires both sides to act reasonably, I will invert the focus. The questions I ask therefore concern the reasonableness of the industry and Government side(s) of the transaction.

In Victoria the revenues that equal users' losses comprise the following: the Government gets somewhat more than one-third in 'taxes'; the two gambling companies, Tabcorp and Tattersall's, to which Government has given a license to operate the machines, take about one-third; and hotels, mostly chain-owned, and clubs will take the remainder. Tax revenues will go to Government programs. The other two-thirds of total losses will part pay wages and salaries in the poker-machine and downstream industries. Much will be profit for the well-off owners of shares in gambling corporations, hotels and clubs.

We also know that the 6% of so-called regulars or heavy users or, definitional disputes notwithstanding, 'problem gamblers,' will suffer consequential harms. Given that current individual disposable income in Australia averages about $28,500 (Australian Bureau of Statistics (ABS), 2005b), it is easy to understand intuitively why such losses cause harm. After all, they represent between one-quarter and one-half of the average individuals have to spend. In the words of the Australian Medical Association:

> The AMA acknowledges that the social, physical and mental health of people with problem gambling and of their families are often at risk as a result of reduced household income and associated social disruption. They may experience stress-related physical and psychological ill health. Other adverse effects include family breakdown, domestic violence, criminal activity, disruption to or loss of employment and social isolation. Additionally, problem gambling may compromise their capacity to afford necessities such as adequate nutrition, heating, shelter, transport, medications and health services. Severe problem gamblers are at risk of self-harming behavior including attempted [and actual] suicide. (Australian Medical Association, 1999)

In effect the industry knowingly causes the six or so percent of the population to experience financial harm and other physical and psychological harms that result from the financial harm. The facts are available for anyone who takes the time and the care to look. Poker machines cause harm to those who use them regularly. The product evidently is harm-causing, and it is supplied by the industry side of the transaction in the knowledge that harm will result. The question we must now answer is *why* providing this particular product to the market actually does cause harm to some of those who use it. Analyzing the phenomenology of impaired control is an important part of the answer.

Professor Mark Dickerson presented evidence to the Independent Pricing and Regulatory Tribunal of NSW (IPART) from a study of more than 200 regular users (in a research program involving more than 700 regulars). In short Dickerson found that 'impaired control i.e., being unable to stick to limits of time and money spent gaming is very common among players who play pokies once per week or more often.' The cause of impaired control was the experience of strong emotion 'experienced during play (enhanced by more playing time and prior levels of mild negative mood)' (Dickerson, 2003a).

> It appears that the research ... has shown the obvious: when shorn of all words that speak of pathology it seems quite obvious that if the purchase point of an extremely attractive entertainment product is embedded in the same process of the player actually enjoying the emotional stimulation and pleasure that arises, why on earth would any person in their right mind expect them to continue to make rational, informed decisions i.e. to gamble responsibly? Impaired ability to control cash and time expenditure during gaming is not about pathology it is a typical human response that despite all the notices and warnings is commonly reported by almost every other regular player. (Note: The research was conducted in venues where warning notices were on the machines, in the toilets, on the walls, pamphlets about problem gambling were available at the bar etc.) If this is taken as a common sense starting point then the obvious question is whether these regular consumers of gaming are getting a fair go? If any other product than gaming were involved then the answer would clearly be 'no'. It would be entirely unacceptable for a product to be sold in an automated, emotionally distracting way that resulted in every other regular consumer buying more than they intended. Add the facts that the typical expenditure per annum of such players is over $10,000 and that 1 in 4 or 5 of them report harmful impacts arising

> from purchasing gambling then it is not surprising that recent legal opinion has supported the view that to market gaming to such regular players may be unconscionable conduct in terms of the Trade Practices Act ... (Dickerson, 2003a; citing Australian Broadcasting Corporation, 2003)

Dickerson urges a shift in policy focus from 'individual difference(s) inherent in some players' to the fact that 'loss of control is the common and expected outcome of the interaction between human beings and contemporary forms of continuous gambling' (Dickerson, 2003a). Inherent in continuous use is the reinforcement process of regular 'wins'. Elsewhere Dickerson refers to studies of human cortical responses where the subjects expect to win money (Breiter, Itzhak, Kaheman, Dale & Shizgal, 2001), arguing that these sit well with his conclusion that powerful 'emotional/physiological responses during a session' are natural. 'The expectation that the player will be able to continue to make controlled, informed, rational decisions during such a session of continuous gambling is ill-founded.' (Dickerson, 2003b)

Furthermore, Dickerson explained to a 2004 international conference on problem gambling, until such time that consumer protection were ensured, any talk of responsible gambling would 'remain egregious platitudes.' He added that '... embedding the purchase point of gambling in a sequence that undermines self-control is not a "fair go"... it appears unethical' (Dickerson, 2004). These are strong conclusions from a long-time gambling researcher.

Recall that we are analyzing a transaction. We are focusing on the ethics of the side or the party who benefits financially. Putting the thought experiment together with the conclusion that the product inherently undermines self-control we can conclude reasonably that the intense, concentrated focus of the industry (and Government) on a small group of regulars who provide 60% of revenues means that the industry intends to rely on this inevitable (natural) loss of control. The industry, therefore, depends on users' vulnerability. The financial, physiological and psychological harm that this focus causes (Australian Medical Association, 1999) is, therefore, necessary to the way this industry operates. It is not a side effect—foreseen but unintended and in proportion to possible benefits—but core business.

Moreover this very feature compounds the harm. 'The harm suffered by victims of injustice,' Australian philosopher Raimond Gaita explains, 'is never merely material or psychological harm' (Gaita, 1999, p. 7). We intuitively understand the distinction when we compare the accidental but otherwise equal physical and psychological harms that might occur in a car accident to those due to a deliberate assault. Something about the latter makes it worse. The very word assault, regardless of the nature of physical and psychological harms that might ensue, conveys the notion of a constitutive harm, a harm-in-itself. Even if you were never to know that someone had tried to shoot you (and missed), harm would have been committed nonetheless: an injustice, a crime, attempted murder.

Harm done is in this way worse than harm suffered. That is why the harms caused by the poker-machine business are 'never merely material or psychological.' They are harms committed by the business because the business targets regulars who lose control. Such harms are committed knowingly, and the business depends on them. It is reasonable to say then that the harm done, constitutively and causally, by the industry, because it inherently exploits vulnerable regular users, is unjust.

Worse still is the fact that the harm done is done by Government, as a partner in industry revenues and as the legislator–regulator of the activity. This is worse precisely because it is reasonable to require that governments act justly. As Hippocrates insisted of doctors,

governments first should 'do no harm.' Rather they should act to enhance the common good and act to protect the populace from harm. When governments impose burdens upon citizens, such as taxes and other duties, the burdens should be fair and equitable. These are basic precepts, yet each one of them the Victorian Government violates in its poker-machine policies and laws. It is right to call these laws unjust.

Figures 8 and 9 make the case plainly. They depict Government shares in the industry's revenues and the other benefits it accrues through levies on machines. In fact it is reasonable to say that the Government, which initiated the industry and created its structure by legislation (Doughney, 2002, chapter 2), is the senior partner in the tripartite enterprise. That it has become dependent on the revenues it raises from poker machines, as shown in Table 4, is additional evidence of corruption of purpose.

Figure 8 also demonstrates the take from heavy, regular or problematic users that business corporations accrue each year. This immediately poses the question of whether it is right that companies such as these should profit from harm. Would, for instance, the law today permit firms to market asbestos products to the public, even with warnings? The answer would clearly be no. Another cause for argument that poker-machine businesses wrongly profit from harm is the legal notion of unconscionable conduct. A leading Victorian barrister, Brian Walters SC, explained this to journalist Jonathan Holmes during the Australian Broadcasting Corporation's (ABC) *4 Corners* program 'George's gold' in October 2003 (Walters, 2003):

> Under the old branch of the law called equity, a bargain was unconscionable, and still is unconscionable, if it involves one party taking advantage of another party ... party's disadvantage knowingly. So someone might be drunk and you get them to sign a contract—that's unconscionable, an unconscionable bargain, and would be set aside. What the *Trade Practices Act* does is make unconscionable conduct unacceptable to the law. If a company was receiving a good part of its revenue from people with a gambling problem and knowingly receiving a good part of its revenue from such people, then that, prima facie, would be unconscionable conduct unless there was some system in place to filter those people out. If they were actually targeting people with a gambling problem, then that would be seriously contrary to the law.

John Middleton QC and John Manetta had made a similar point in a 2002 opinion. They explained that the *Trade Practices Act* uses a wider concept that goes beyond specific separate transactions. Significantly it:

> ... includes doing or refusing to do any act [see TPA s. 4(2)]. It can include the operation of an entire line of business, or its operation in a certain manner: for example, without certain safeguards ... It would not therefore distort the meaning of the section to frame the question in this way: if a gaming operator suspects that a large proportion of its revenues derives from compulsive gamblers, but is unwilling to implement effective screening measures, does the operator's ongoing acceptance of bets from an anonymous public at large make for conduct that is, in all the circumstances unconscionable? (Middleton & Manetta, 2002, p. 22)

Middleton and Manetta answer their own question: '... It is hard to see why the answer to the question would not be yes.' (Middleton & Manetta, 2002, p. 22)

Holmes put another question to Walters based on the leaked data from Tattersall's mentioned in previous sections. What if operators of poker machines knew who used

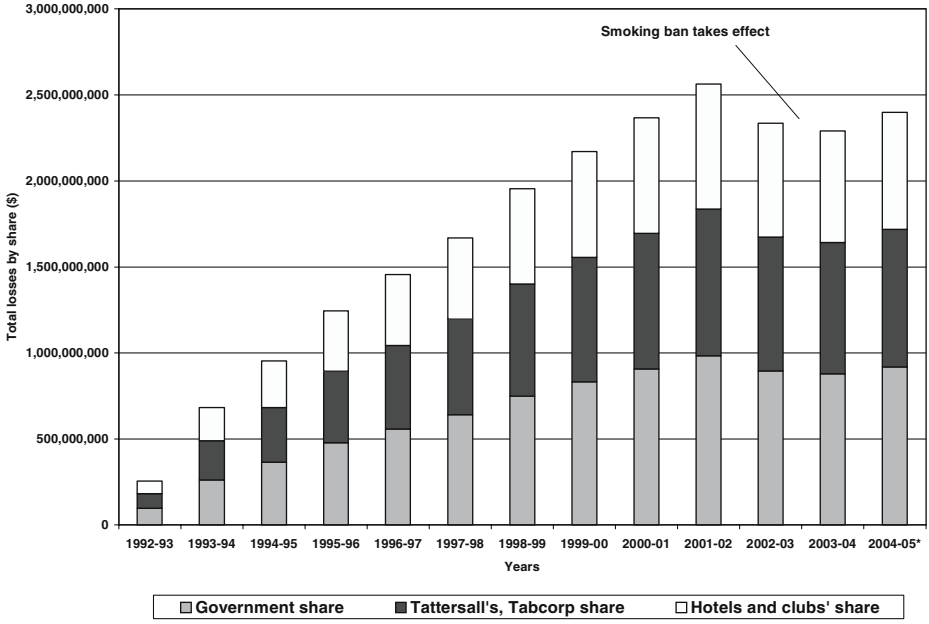

Fig. 8 Total poker-machine losses in Victoria 1992–1993—2004–05. Source data: Victorian Commission for Gaming Regulation (2005)

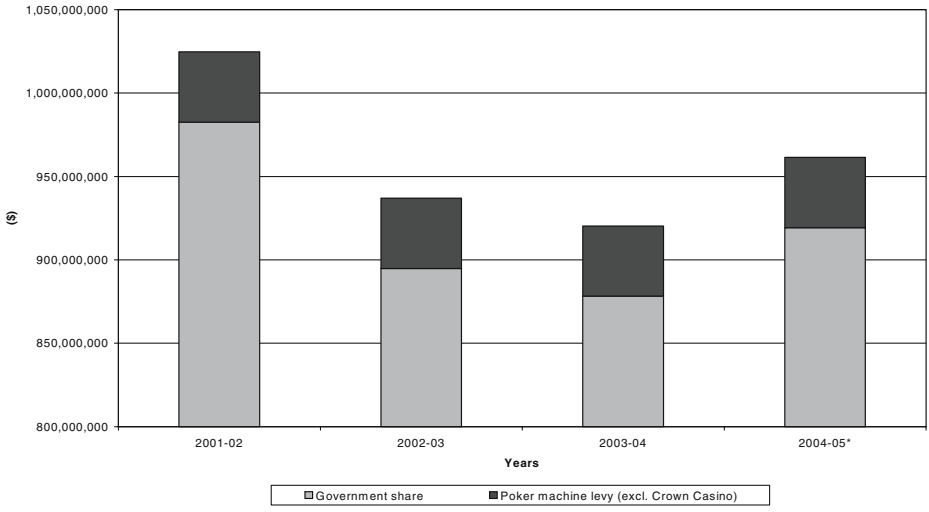

Fig. 9 Victorian Government poker machine 'tax' and 'levy' revenues ($). Source data: Victorian Commission for Gaming Regulation (2005)

Table 4 The States' Own-Source Taxation Revenues 2003–2004 (percent)

	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Total
Payroll	29.0	26.8	22.2	25.4	27.6	26.5	34.5	23.5	26.8
Property	9.4	9.4	7.9	10.6	9.7	5.9	–	23.6	9.4
Financial	0.9	2.6	3.9	2.7	2.6	4.8	3.4	2.3	2.2
Stamp Duties	30.1	27.2	33.9	24.8	33.4	22.5	26.9	28.0	29.8
Lotteries	1.9	3.0	2.8	2.7	1.8	3.2	4.5	1.7	2.4
Poker Machine	5.3	8.0	6.8	10.0	–	8.7	–	4.4	6.0
Casino	0.5	1.0	0.8	0.6	0.5	0.5	6.8	0.3	0.7
Racing	1.0	1.1	0.5	0.2	0.8	–	–	0.1	0.8
Other Gambling	0.0	0.0	–	–	–	–	3.4		0.0
Total Gambling Taxes	8.7	13.1	10.9	13.5	3.2	12.4	14.8	6.5	10.0
Insurance (Fire)	2.5	2.9	–	–	0.8	4.8	–	–	1.8
Third Party	0.2	1.0	0.7	1.4	–	0.5	–	–	0.5
Other Insurance	5.3	5.5	4.8	8.1	7.2	4.8	7.6	5.0	5.7
Motor Vehicle Taxes	11.9	11.1	14.6	13.3	15.6	17.7	12.9	11.0	12.7
Fuel	–	–	–	–	–	–	–	–	–
Tobacco	–	–	–	–	–	–	–	–	–
Liquor	0.0	0.1	–	–	–	–	–	–	0.0
Other	1.9	0.5	1.2	0.1	0.0	0.3	0.0	0.0	1.0
Total	29.0	26.8	22.2	25.4	27.6	26.5	34.5	23.5	26.8

Source data: Australian Bureau of Statistics (ABS) (2005a)

machines and the extent to which heavy users contributed to losses? Walters's answer was unambiguous (Walters, 2003):

> That is a firm foundation for taking a case before a court. The ... fact that they are aware that people have gambling problems is manifest—I mean, they have signs on the machines referring to that. Once they have a close demographic understanding of people using their machines in a way that can't rationally be justified, and they're not doing anything to filter them away, but, in fact, trying to make them choose to come to their venues, then that does smack of unconscionable conduct. They are making money from people who they know to be disadvantaged ... and the material that you've raised with me ought to be enough to justify the ACCC [the Australian Competition and Consumer Commission] referring the matter to the courts.

Three grounds that the lawyers highlighted in their comments are germane to the description that I have unfolded in this paper. The first is that business knowingly takes advantage of someone's incapacity to engage in a transaction/contract competently (e.g., drunkenness, acting compulsively etc.). The second is that the business knows that a large proportion of losses came from people with gambling problems. The third is the availability of screening measures to identify those with problems, such as smart-card technologies and observational techniques (Schellinck & Schrans, 2004; , Dickerson, 2003a, 2003b, 2004). These grounds imply that the poker-machine businesses is patently 'making money from people who they know to be disadvantaged' (Walters, 2003).

Conclusion

My conclusion will be brief. It is that the prevailing state of affairs is unjust. Merely by saying this is also to state an imperative, namely that society must act to end the injustice.

This might be by dramatic reforms that change the character of poker-machine provision (fewer machines, fewer lines, slower spins, smart-card tracking, smaller 'bets' etc.). If this is unacceptable to the industry then the lesser evil would be prohibition, until such time that the machines could be introduced according to the precautionary principle: i.e. prove that the product and its method of provision are safe. Altogether the worst possible state of affairs would be the status quo.

We do not need further research in order to have answers sufficient for policy development and implementation. Of course, while the status quo prevails continuing psychiatric/psychological and neurobiological research will be needed to understand the problem and to help people who use poker machines in ways that harm them.

Mesothelioma and asbestosis, too, require research to help in treatment and to understand their specific pathologies and cellular causes. However, do we really need research to tell us what is their first-order cause? No, we know the answer to that. Exposure to asbestos causes asbestosis and mesothelioma. Ban asbestos products and remove the last vestiges of asbestos from our workplaces and homes and we will defeat asbestos disease.

Similarly, poker machines cause poker-machine caused harms and associated 'problem gambling' behaviors. For policy, we know enough.

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