The Poker Machine State:
Unethical governance and its implications for policy and social activism

By James Doughney
November 2005

The Poker Machine State:
Unethical governance and its implications for policy and social activism

James Doughney[1]

The 'poker machine state' is a description of an unethical state of affairs. We can describe this unethical – unconscionable – state in part by calculating one or another index to estimate the harmful impact of poker machines. The nature of the business means that this impact must occur. Full description, however, requires us to describe four additional unethical 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.

Introduction

The 'poker machine state' is a description of an unethical state of affairs. In the first section I will describe this unconscionable 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 increasingly rely on them for revenues. The equation is:

$$I_h = (0.6\sum L / 0.15u\sum P) / S$$

This equation describes what necessarily must be the financial impact of poker machines in our communities. Section one will also contain an explanation of how this equation might function in a factually grounded ethical social policy analysis.

Section two contains an application of the approach developed in section one to the data of metropolitan Melbourne. It will offer a geographical representation of the distribution of machines and losses. This representation will demonstrate (again!) the predatory concentration of industry and government on the relatively disadvantaged.

Section three extends the description of the poker machine state by discussing briefly four of its additional unethical aspects. First, the section provides evidence that heavy users of poker machines necessarily lose control of their actions.

---

[1] Work and Economic Policy Research Unit, School of Applied Economics, Victoria University, Melbourne. Author of *The Poker Machine State: Dilemmas in Ethics, Economics & Governance* (Doughney 2002). I wish to thank participants at two conferences for their comments, which have helped me to shape the content of this paper. The first was a co-presentation with Gabriela Byrne at the Catholic Social Services Victoria conference, *Spheres of Influence: State Election 2006*, 9 November 2005, in Melbourne. The second was the Duty of Care *International Pokies' Impact Conference,* Adelaide, 14-15 November 2005.

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.

Finally I will offer a few thoughts on the way forward for social activism against the poker machine state.

1 How the numbers add up to an unethical state of affairs

Those schooled in traditional behaviourist (or 'positivist') social science will doubtless splutter in indignation at 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 (see also Doughney 2005, 2004).

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 empirical research. This research has not been rocket science, by any means. Rather it has been investigative, ploddingly investigative. Like with a jigsaw puzzle or a story the pieces and the plot lines were assembled as new data or information became available. Nor does the research rely on fancy statistical inference. Rather it has been more of a factually based exercise in reasoning: inference to increasingly better causal explanations.

So what does the equation represent? To understand it we need to define its terms. Recall that the equation is:

$$I_h = (0.6\sum L / 0.15u\sum P) / S \qquad (1)$$

The first term (I_h) stands for *impact on heavy users*. It can be a dollar figure or the dollar figure can be converted into a ratio or index, which is a device for ranking impacts. The second term ($\sum L$) simply stands for total losses per year. These can be total losses 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, while the next term ($\sum P$) is the adult population of the entity. The fifth and final term (S) is a number that represents the socio-economic status (SES) of the area, from highest to lowest. Rearranging equation (1) gives:

$$I_h = (0.6/0.15) \times (\sum L / u\sum PS) \qquad (2)$$

Where do the figures 0.6 and 0.15 come from? Therein lies a tale. In the relatively distant past indiscrete comments by an executive or two from the gambling giants

Tattersall's or Tabcorp gave researchers cause to believe that they received 80 per cent of their revenues from 20 per cent of their customers. That is, described more accurately, 80 per cent of total losses derive from 20 per cent 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 was significant because it gave solid internal data on questions that have vexed gambling researchers for some time: '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 the sad truth is that direct and reliable evidence on such key problems 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 judgements 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 (2002, p. 7).
3. The 'advantage' scheme explicitly targets already 'high turnover' or heavier users. It does this by offering 'rewards' designed to keep them at the machines longer (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' (2002, p. 26).
5. Users are mainly in the older age groups, especially in the high loss 46-55 cohort (2002, p. 43). Daytime users lose an equal, if not greater amount, than do night-time users (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 per cent of total revenue – 'from a very small group of customers', namely the 15 per cent 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 per cent spends an average of 153 minutes 'playtime' per visit, visits more than once per month and visits more than one venue (2002, p. 45). That is, approximately 60 per cent of total losses derive from 15 per cent of users who lose more than $100 each two hours and 33 minutes at the machines. These, of course, are heavy users by any standard.

Now, if this 15 per cent lose 60 per cent of the total, then they must lose (60/15) or (0.60/0.15) times the average amount lost. The answer is four, 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 per cent. This 40 per cent (or 0.40) corresponds to the term (u) in our equation. If we divide four 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 per cent) then heavy users would be losing 12 times the average.

Tables 1 and 2 present the actual 2004-05 population and poker machine data for Victorian. 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.

Table 1 Victorian population and poker machine data 2004-05

	2005 Population projection	*2005 Population projection (18+)*	*Venue no.*	*Machine no.*	*Total net losses 2004-05*
*Metropolitan total**	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, * excludes City of Melbourne

Table 2 Victorian poker machine data per adult and heavy user 2004-05

	Venue no. per adult (18+) 2004-05 (2005 population projection)	*Venue no. per adult (18+) 2004-05 (2005 population projection)*	*Total net losses per adult (18+) 2004-05 (2005 population projection)*	*Total net losses per heavy user 2004-05 (with 40 per cent rate)*	*Total net losses per heavy user 2004-05 (with 33.3 per cent rate)*
*Metropolitan total**	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, * excludes City of Melbourne

Let us remind ourselves, however, of what these losses represent. These are the losses of the 15 per cent of users – or the 5-6 per cent of the adult population, 200,000 or so Victorians – that comprise 60 per cent of the industry's revenues. These losses comprise 60 per cent of the Government's share in this industry ('taxes'). They come from people who on average lose more than $100 per visit and spend two hours and 33 minutes 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 one and two 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 inevitably, of necessity, cause harm to those individuals, their families, their friends and workmates and their communities. This concentration of losses is not the stuff of the 'harmless flutter'. The data by themselves tell us this. Because we, too, live in this society we know 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.

2 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 communities of relatively low socio-economic status (SES). In the earlier days the industry's representatives would admit that they offered a 'blue collar' form of entertainment (see references in Doughney 2002). Over time this targeting became less popular, and industry representative today tend to resile from their former candour. Nonetheless the facts are still there for all to see. The Government's 'regional capping' policy, which redistributed a laughably small number of machines from some low-SES areas, has predictably failed to make a tangible difference.

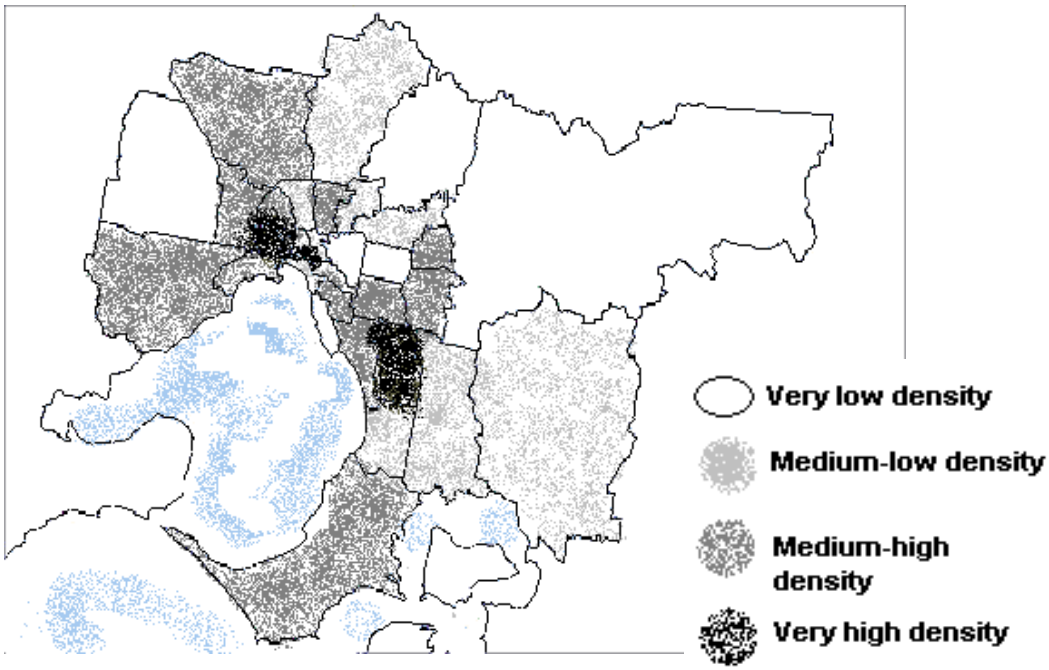
Charts 1-4 give an overview of the problem in metropolitan Melbourne. The first merely shows metropolitan Melbourne's local government areas (LGAs). Chart 2 depicts four levels of poker-machine density, measured as machines per 1,000 adults by LGA. The levels are rather arbitrary, but they are designed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

Clearly the machines concentrate in the less affluent western, north-western and northern regions. Their density is sparse in the more affluent eastern, outer-eastern and north-eastern regions. The picture is less clear in the south-east, with the exception of Bayside and, in contrast, Mornington Peninsula. Charts 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 charts. In chart 5 the LGAs are shown on the horizontal axis from lowest to highest machine density, while in chart 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.

Chart 1 Metropolitan Melbourne local government areas

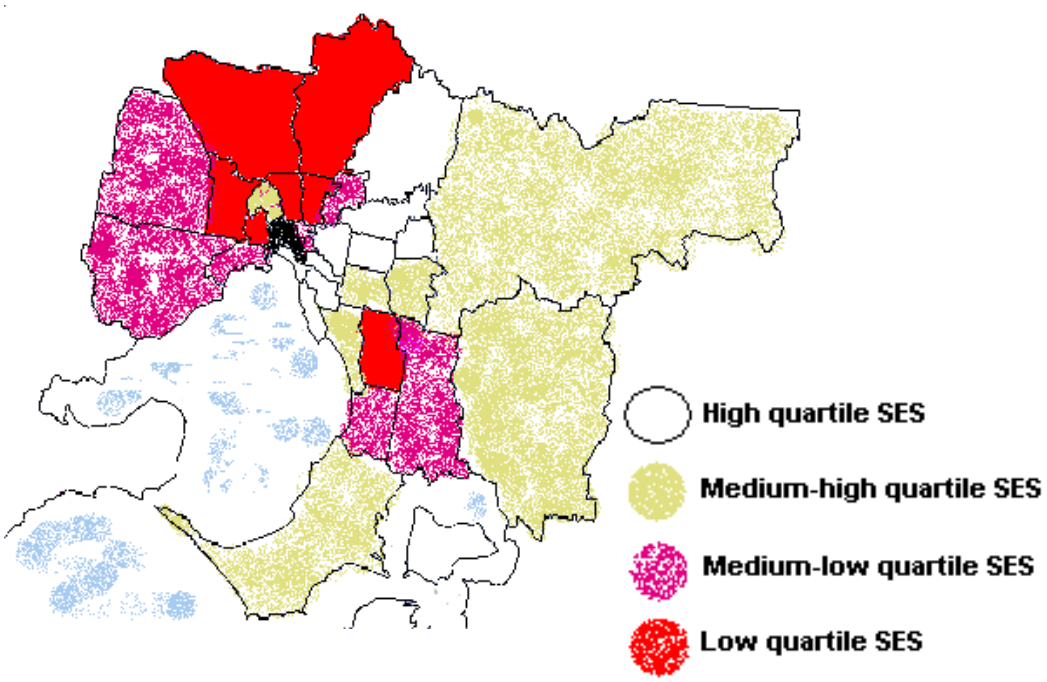
Source: Victorian Department of Infrastructure

Chart 2 Poker-machine density metropolitan Melbourne 2004-05



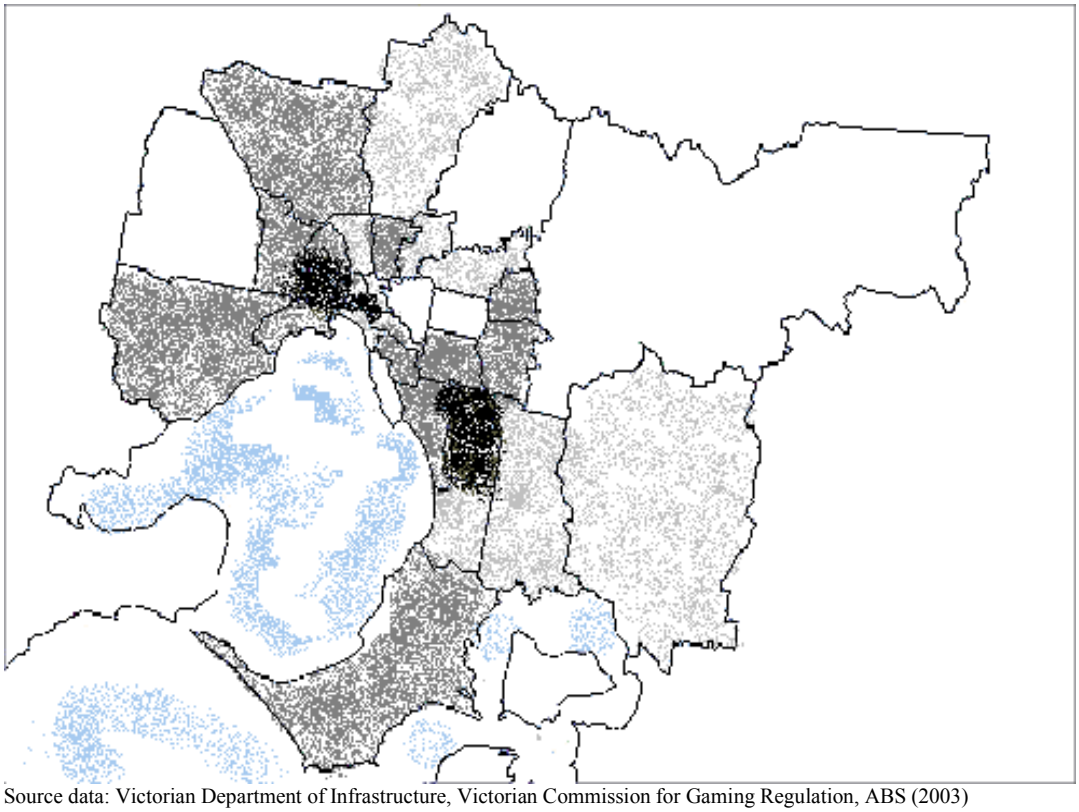
Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation

Chart 3 Socio-economic status (SES) metropolitan Melbourne 2004-05



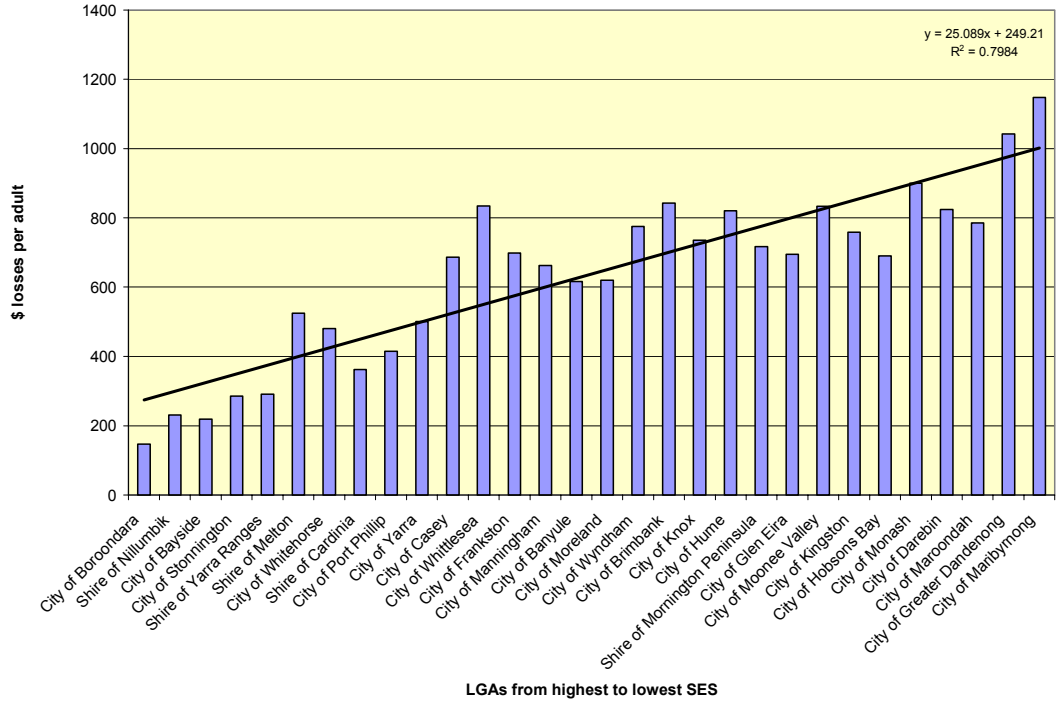
Source data: Victorian Department of Infrastructure, ABS (2003)

Chart 4 Poker-machine density and SES metropolitan Melbourne 2004-05



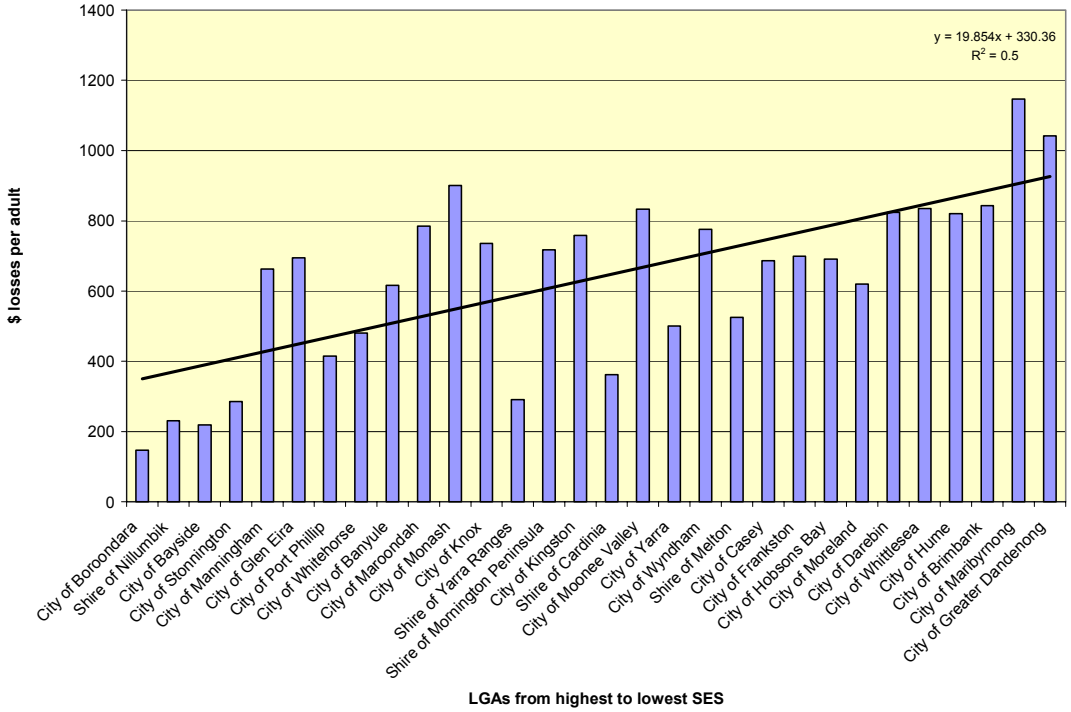
Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation, ABS (2003)

Chart 5 Losses per adult per year by LGA from lowest to highest density 2004-05



Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation, ABS (2003)

Chart 6 Losses per adult per year by LGA from lowest to highest SES 2004-05



Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation, ABS (2003)

Now the charts 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, assuming that the same proportion uses the machines in each LGA as for the State as a whole. Table 3 gives the results.

Table 3 Losses per adult and heavy users by Melbourne metropolitan LGA

City / Shire	*Losses per adult 2004-05*	*Losses per heavy user 2004-05 (with 40 per cent rate)*	*Losses per heavy user 2004-05 (with 33.3 per cent 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, ABS (2003)

The average loss per heavy user in the LGAs of Greater Dandenong and Maribyrnong, the two lowest SES Victorian LGAs, ranges approximately between about $10,500 and $13,500. The comments earlier about concentration of losses

apply, therefore, with even greater force. 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 to those individuals, their families, their friends and workmates and their communities. This socio-economic concentration of losses is not only not the stuff of the 'harmless flutter', but it is egregiously predatory. We, too, live in this society. The data to us are ethically self-explanatory.

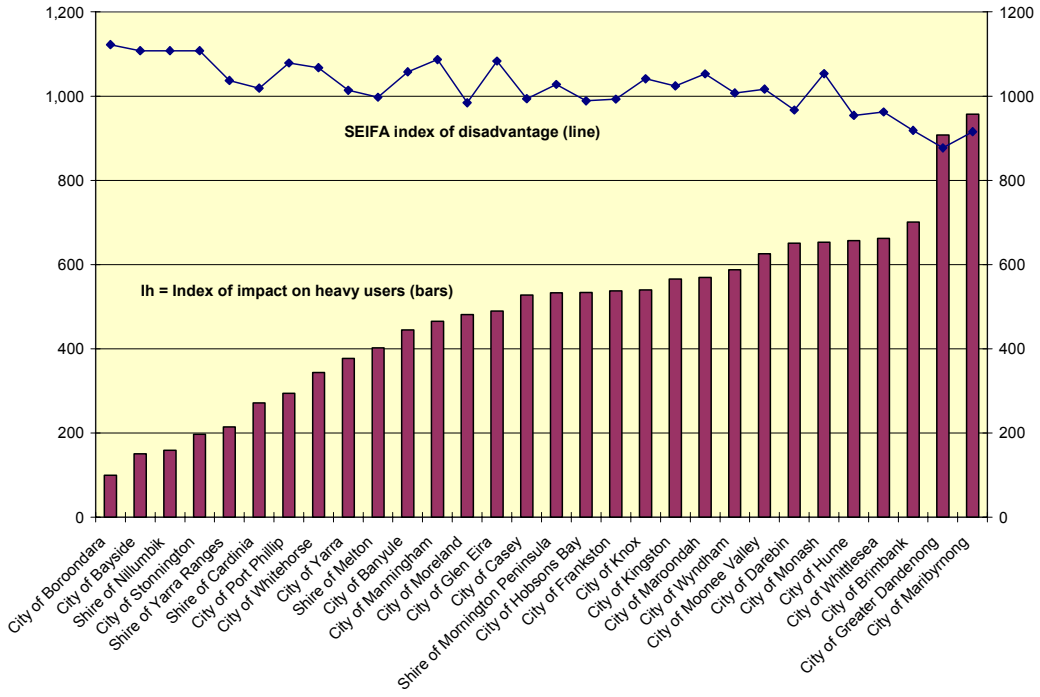
Understanding the implications of the simple intuition that poorer people can less afford to lose because they have less to lose gives meaning to the final feature of the equation from the preceding section. Recall that the equation is:

$$I_h = (0.6/0.15) \times (\sum L / u \sum PS) \qquad (2)$$

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

$$I_h = (10 \text{ or } 12) \times (\sum L / \sum P) / S \qquad (3)$$

Chart 7 Index of impact on heavy users of EGMs by Melbourne metropolitan LGA



Source data: Victorian Department of Infrastructure, Victorian Commission for Gaming Regulation, ABS (2003)

Equation (3) can be stated in plain English in the following way. 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 chart 7.

In simple terms, the bars in chart 7 show the impact on heavy users as a proportion of the impact of users in the least affected municipality. That is, the impact in Greater Dandenong and Maribyrnong is about eight to nine times the impact in Boroondara (the least affected area). Two differences between the LGAs account for this substantial difference in the impact index: first, and most significantly, losses per adult and heavy user are considerably higher in Greater Dandenong and Maribyrnong; second, these LGAs have a lower socio-economic ranking, which makes the loss of a dollar in them more severe than it would be in the wealthy Boroondara. Note also from chart 7 that the ranking of the LGAs by impact is almost a mirror image of their SEIFA ranking.

Incidentally we know that a close connection exists between the socio-economic status of users and the regional distribution of losses. How? The answer is that people use poker machine venues close to their homes: mostly within a couple of kilometres (see e.g. KPMG 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.

3 Unethical, unjust and unconscionable

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

I will present below normative positions (i.e. state explicitly or imply what should or should not happen). These positions, however, are not mere additions to the facts, or 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 analyse. We should enquire as much to find moral as we do, say, financial 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 analysing 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.

Let us then consider a thought experiment that presses the issues into a compact bundle. From among the Melbourne population we select 100 adults randomly. Then we discard 60 or a few more. These are the lucky ones. Rather we will target the remaining 35-40. We will be gentle on about 30-34 of them, however. We will let this group only occasionally involve themselves in our task. Instead we will focus on the remaining five or six. Let us make it six. Four must be women. We find that the six are from areas of about average socio-economic status. That will not do for our purposes. We go back to the pool of 34 and select a greater number who are worse off than the average, with four still being women.

Now we can go to work on the group. Their task is to be regular poker machine users. We will sit them behind the machines more than twice a week, for two hours and 33 minutes each time (mostly around the lunch-early afternoon time slots). We know already what the result will be. The product these six are using is designed to make them lose. As it happens the average loss is about $7-8,000 per year. We will make sure that the less well off of the six use more and lose more (between $10,000 and $14,000 per year). We will (roughly speaking) split the losses in three ways: the government will get one-third, which we will call taxes; two gambling companies, to which government has given a licence, will take one-third or more; and hotels, mostly chain-owned, and clubs will take the remaining third or less. 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 six – whom *we have made* 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 (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 behaviour including attempted [and actual] suicide. (AMA 1999)

In effect our thought experiment – based transparently on the facts describing state of affairs in Victoria – has us systematically targeting a limited number of people and forcing harmful behaviours on them. We force them to experience financial harm and other physical and psychological harms that result from the financial harm. We do it so that others might gain. The question we must now answer is why the results of the thought experiment actually do occur in reality. Analysing the phenomenology of impaired control is an important part of the answer.

Professor Mark Dickerson (2003a) presented evidence to the Independent Pricing and Regulatory Tribunal of NSW (IPART) from a study of more than 200 regular users (in a research programme 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)' (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 ... (2003a; citing ABC 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' (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.' (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' (2004). These are strong conclusions from a long-time gambling researcher, one who once held the Tattersall's Chair in Psychology at the University of Western Sydney.

Recall that we are analysing 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 per cent 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 (AMA 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', philosopher Raimond Gaita explains, 'is never merely material or psychological harm' (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, an attempted murder.

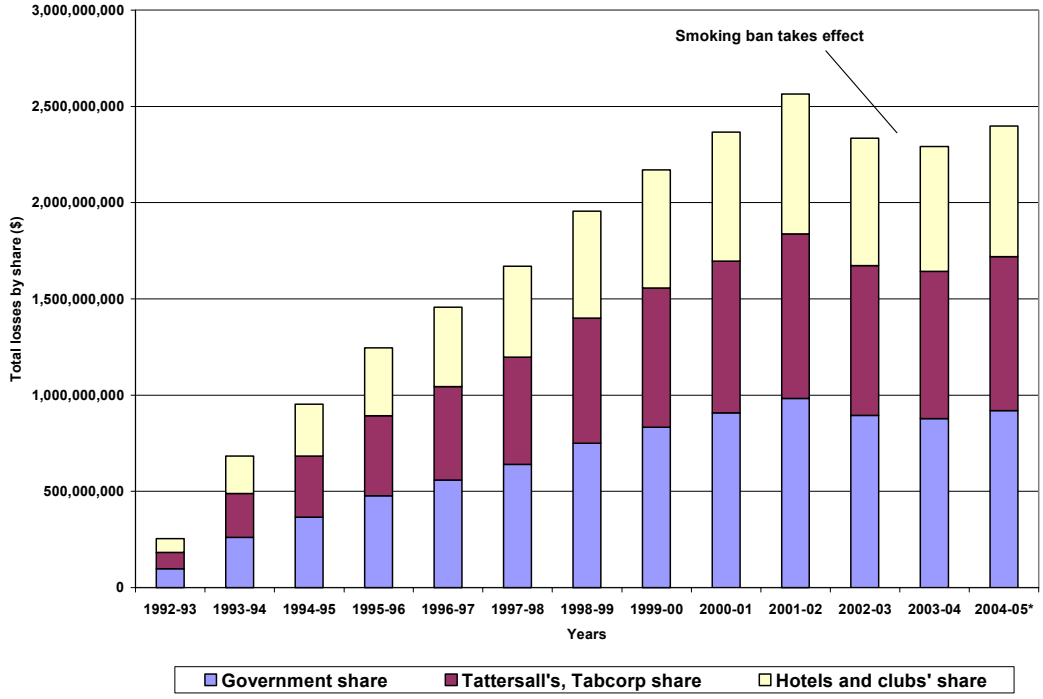
Harm done is greater than merely harm suffered. That is why the harms caused by the poker machine business are 'never merely material or psychological'. They are harms committed by the business because the business targets regulars who lose control. Such harms are committed knowingly, and the business 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.

Charts 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 increasingly dependent on the revenues it raises from poker machines, as shown in table 4, is additional evidence of corruption of purpose.

Chart 8 Total poker machine losses in Victoria 1992-93 – 2004-05



Source data: Victorian Commission for Gaming Regulation

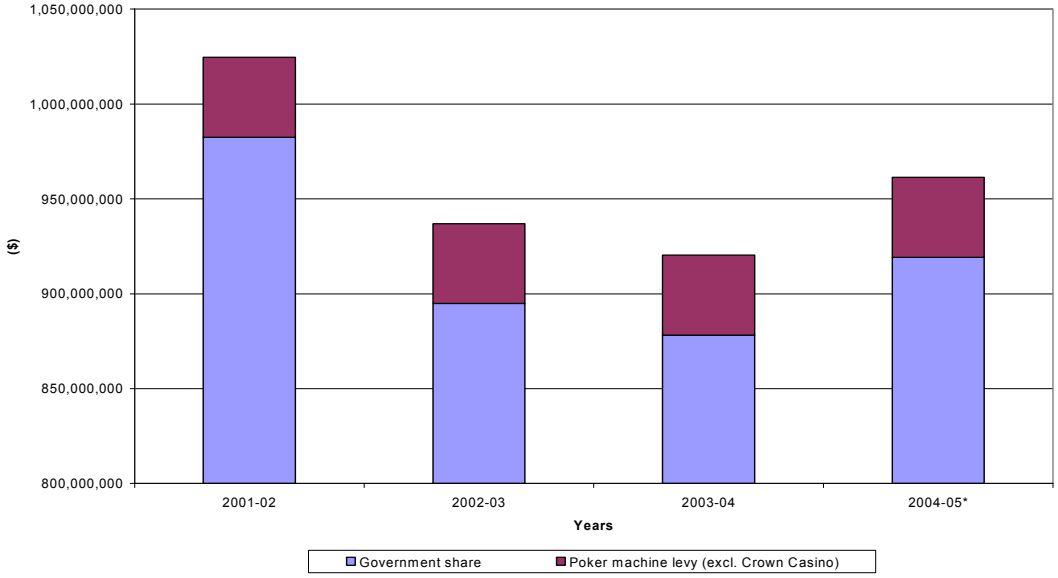
Table 4 The States' own-source taxation revenues 2003-04 (per cent)

	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: ABS (2005a)

Chart 9 Victorian Government poker machine 'tax' and 'levy' revenues ($)



Source data: Victorian Commission for Gaming Regulation

Chart 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 permit James Hardie 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 ABC *4 Corners* programme '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.' (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 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.). What does loss of control or impaired control imply about this ground? The second is that the business knows that a large proportion of losses came from people with gambling problems. What does the concentration of losses, stylised in the thought experiment, imply about this ground? The third is the availability of screening measures to identify those with problems. What does the well-known existence of smart-card technologies and observational techniques (Schellinck and Schrans 2004; Dickerson 2004, 2003a, 2003b) imply about this ground? If these three conditions existed then poker machine businesses would be patently 'making money from people who they know to be disadvantaged' (Walters 2003).

Of course, my questions are rhetorical. All three conditions exist. The conduct of poker-machine businesses is unconscionable and should be subject to legal challenge.

Conclusion

My conclusion will be brief. It is that the prevailing state of affairs is unjust. We must act to stop it. 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, including the status quo of perpetual-motion research into many questions that have been answered in ways sufficient for policy development and implementation.

Curiously deep psychiatric/psychological and neurobiological research might continue for people who use poker machines in ways that harm them. Long and distinguished research careers could be made here, *just as long as the status quo prevails*. 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' behaviours. For policy, we know enough.

What then is the best course to follow? Unfortunately, given governments' increasing dependence on poker machine revenues, I do not see great value in investing a lot of activist energy in lobbying either of the Liberal-National or Labor parties to change their approach. They have demonstrated their cravenness too many times. Similarly, working with the industry to develop 'responsible gaming' policies and practices is ridiculously quixotic.

We can call upon government and industry to change, of course, and we can present decent, responsible public policy positions as alternatives. However, to see such activity in any other terms than proselytising would be to create false hope. Undertaking legal challenges, coupled with more robust public campaigning, including running for public office, seem to offer greater prospects for success. The main parties will have to have moral policy forced on them by a concerted activism that rightly inflames public opinion.

I would also like to pose one more possibility. I will do it in the form of a question: ethically, morally, are we bound to abide by unjust laws? Should we abide an unjust state of affairs? A long line of moral argument says that the answer to both questions is no. It would be interesting and perhaps timely to explore reasonable possibilities that arise in response to the no answer. In the interim let me propose one possibility: visible public protests at the forthcoming Melbourne Commonwealth Games, partly funded as they are by Community Support Fund poker-machine taxes and Tabcorp sponsorship.

References

Australian Bureau of Statistics (ABS) 2005a, *Taxation Revenue, Australia*, (Cat. No. 5506.0), [online] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/945449BF849F6071CA256889001E54AD [last access 17 April 2005].

____ 2005b, *Household Income and Income Distribution, Australia*, (Cat. No. 6523.0), ABS, Canberra.

____2003, *Socio-Economic Indexes for Areas, Australia 2001*, (Cat. No. 2039.0), ABS, Canberra.

Australian Broadcasting Corporation 2003, 'George's gold', *4 Corners*, 13 October 2003, transcript, [online] http://www.abc.net.au/4corners/content/2003/transcripts/s965996.htm [last accessed 11 April 2005].

Australian Medical Association (AMA) 1999, 'Position statement: Health effects of problem gambling', [online] http://www.ama.com.au/web.nsf/doc/SHED-5G7CJM [last accessed 17 April 2005].

Breiter, HC, Aharon, I, Kahneman, D, Dale, A & Shizgal, P 2001, 'Functional imaging of neural responses to expectancy and experience of monetary gains and losses', *Neuron*, No.30, pp. 619-639.

Dickerson, MG 2004, 'Measuring and modelling of impaired control: Implications for policy', *Insight International Problem Gambling Conference*, Nova Scotia, Canada, 5 October, [online] http://www.nsgamingfoundation.org/main/presentations/Professor%20Mark%20Dickerson.pdf [last access 25 November 2005].

____ 2003a, 'Reframing "responsible gambling" as consumer protection', submission to the IPART review of gambling harm minimization measures (ref:03/308), [online] http://www.ncalg.org/Library/Studies%20and%20White%20Papers/Addiction%20and%20Health/dickersonipartsubmission.pdf [last access 25 November 2005].

____ 2003b, 'Exploring the limits of "responsible gambling": Harm minimization or consumer protection?', *Gambling Research (Journal of the National Association for Gambling Studies Australia)*, No. 15, pp. 29-44.

Doughney, J 2005, 'Moral description: Overcoming the fact-value dichotomy in social research', *eCOMMUNITY: International Journal of Mental Health and Addiction*, Vol. 2, No. 2, pp. 6-12.

____ 2004, 'Living off immoral earnings: An ethical critique of the Victorian poker machine partnership', *Australian Journal of Professional and Applied Ethics*, Vol. 6, No. 1, pp. 20-35.

____ 2002, *The Poker Machine State: Dilemmas in Ethics, Economics & Governance*, Common Ground Publishing, Melbourne, www.theHumanities.com.

Gaita, R 1999, *A Common Humanity*, Text Publishing, Melbourne.

KPMG Consulting 2000, Longitudinal Community Impact Study, Victorian Casino and Gaming Authority, Melbourne.

Middleton, J & Manetta, J 2002, 'Joint memorandum of advice', unpublished opinion, Urban Seed Mission, Melbourne.

Tattersall's 2002, *Customer Relationship Management Programme: What Have We Learnt?* Tattersall's, Melbourne.
Victorian Commission for Gaming Regulation, 'Industry information', [online] http://www.vcgr.vic.gov.au/domino/web_notes/vcgr/site.nsf/pages/industryinfo [last access 7 November 2005].
Walters, B 2003, 'George's gold', *4 Corners*, 13 October 2003, transcript, [online] http://www.abc.net.au/4corners/content/2003/20031013_georges_gold/int_walters.htm [last accessed 18 April 2005].