

Op-Ed/Editorials - Pathological gambling should not be an excuse for law-breaking

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Pathological gambling should not be an excuse for law-breaking

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It has been claimed that the insurance business is a gamble, that actuaries determine the size of your bet after they calculate the odds that your house will burn down during the period that your policy prevails. More generally, it has been said that life itself is a gamble, a kind of slot machine that in the end inevitably takes all your quarters. But nobody sensibly regards these kind of wagers, nor matters such as deciding the odds regarding when it is safe to cross the street. Unless, of course, persons become so incapacitated by the uncertainty of life's calculated risks that they are immobilized.

The kinds of gambling that have come to command psychiatric and psychological attention are those that involve money that is bet at casinos and other wagering venues. Part of the concern is puritanical: only money earned by work (or inheritance) is deemed legitimate. To rely on luck or chance or skill in gambling contests is to enter a realm that is God's monopoly. Cotton Mather, the fire and brimstone preacher of American colonial times, made this clear: "Lots, being mentioned in the sacred oracles of scripture are used only in weighty cases, and as an acknowledgment of God sitting in judgment, cannot be made the tools and parts of our common sports, without, at least, such an appearance of evil, as is forbidden in the word of God."

At least as important in maintaining that some forms of gambling represent an

addiction that needs to be dealt with by psychiatrists, psychologists, and social workers, is the imperial overreach of practitioners in this competitive treatment enterprise. That overreach has come to embrace a panoply of arguable “mental conditions.”

The major source today regarding ingredients of what is claimed to be pathological or compulsive gambling is the fourth edition of the diagnostic manual of the American Psychiatric Association (DSM-IV). The manual denotes what it regards as maladaptive gambling behavior as an impulse control disorder and maintains that about four percent of Americans suffer from this malady during their lifetime. If five of the following ten items characterize a gambler he or she is declared to be a gambling addict.

(1) is preoccupied with gambling;

(2) needs to gamble with increasing amounts of money in order to achieve the desired excitement;

(3) has repeated unsuccessful efforts to control, cut back, or stop gambling;

(4) is restless or irritable when attempting to cut down or stop gambling;

(5) gambles as a way of escaping from problems or of relieving a dysphoric mood;

(6) after losing money gambling often returns another day to get even;

(7) lies to family members, therapist, or others to conceal the extent of involvement with gambling;

(8) has committed illegal acts such as forgery, fraud, theft, or embezzlement to finance gambling;

(9) has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling;

(10) relies on others to provide money to relieve a desperate financial situation.

This roster of diagnostic clues has no empirical basis. Why do five items, instead of six or four, provide diagnostic assurance? There also is an unfounded

assumption that each of these items is of equivalent weight. Note further that a rich person has an advantage in evading the label: he or she need not resort to the criminal behaviors listed in Item 8 to finance gambling and, if living at leisure, will not jeopardize a job or the other commitments found in Item 9. Presumably, these considerations should not render the person less of a presumed "pathological" gambler, though they do so. Item 9 also indicates that a spouse can give you a boost toward a mental disorder by taking umbrage at your gambling behavior, which is not to deny that gambling problems can wreak havoc in a family, though the dynamics of the situation often involve much more than only the gambling.

Chronicling the development of the DSM standards in a New Yorker article, (January 3, 2005), Alix Spiegel found them lacking in scientific integrity. Talking of the recipes used to identify what often have been rather haphazardly labeled "mental disorders," one psychiatrist told Spiegel: "In a vacuum, to create criteria that were based on accepted wisdom as a first stab was fine, so long as you didn't take it too seriously." Defenders of the DSM note that, if nothing else, it offers guidelines and a point of reference for therapists who deal with persons who seek or are consigned to seek help with gambling problems.

The Potemkin Village nature of the DSM-IV standards has led to some astringent judicial observations when defendants have relied on expert witnesses to persuade judges or juries that a gambling obsession was responsible for their illegal behavior. In *United States v. Scholl* (1997), the judge, after listening to a psychiatrist who said he had treated more than 1,000 pathological gamblers, noted that "something does not become 'scientific knowledge' just because it's uttered by a scientist," and that the witness' testimony "barely rises above mere speculation." She also noted that the peer review and publication record concerning pathological gambling was "minimal." Add to this the observation of Howard Shaffer, a highly-regarded medical researcher, that studies of pathological gambling are "conceptual chaos."

Nonetheless, there have been cases in which a sympathetic judge granted a "downward departure" for a convicted "pathological gambler." Such instances primarily appear to involve a belief that the mandated term of imprisonment was too severe for the actual offense. This procedure came to an end, however, when Congress in 2003 singled out pathological gambling as an excuse no longer qualifying for a reduced sentence. In bankruptcy cases, compulsive gambling

claims often used to result in dischargeability judgments, that is the person declaring bankruptcy was excused from repaying a credit card company. Judges seemed to view the promiscuous distribution of credit cards as justifying having the companies accept the consequences of their seductive offers. But that situation ended this April when Congress foreclosed such exemptions.

Scientific evidence can provide data to support or undermine moral and political conclusions. But it cannot stipulate those conclusions. The record and the ethos of liberty reinforce the view that gambling for money should be seen a choice selected for purposes that recommend themselves to a person making wagers. The behavior may result in any number of consequences, including those itemized by the psychiatrists, though we have no way of knowing what might have happened had the person not gambled. We do not keep people off the highways because of the heavy toll in accident deaths; nor do we define "excessive" driving as an addiction, or, for that matter, excessive eating, stamp-collecting, the diligent pursuit of women (or men); or a host of other human experiences that sometimes have outcomes that many of us find unappetizing.

These laissez-faire arrangements are known as freedom: freedom to select what you want to do and freedom to enjoy and/or suffer the consequences of such choices.

What do you think? You can address comments to Gilbert Geis.

References

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