The Tale of Two "Sins": Regulation of Gambling and Tobacco

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Introduction

The year is 1964. Nearly 40% of the adult population in the US smokes cigarettes and cigarette commercials accounting for 15% of network television advertising. Meanwhile, New Hampshire became the first state in over sixty years to conduct a lottery. The New Hampshire lottery will conduct a weekly drawing and tickets will cost $.50. There is only one state that permits casino gambling while the form of gambling that the majority of states permit is betting on the “sport” of horse racing.

Now let us move forward forty years to 2004. Only 25% of the US adult population smokes cigarettes and cigarette makers are not permitted to advertise in any media. North Carolina becomes the thirty-ninth state to enact a state lottery while twenty-seven states have some sort of casino gambling. Ironically, Churchill Downs the home of US Horse racing pins its survival on obtaining a license to operate slot machines.

So in a forty year period, the fortunes of these two “sin” industries changed radically. Why did this occur and what were the rationales utilized by public policy makers as they went about making decision-making process? Trying to provide answers to these questions will be the focus of this paper.

Lawmakers love the revenue and hate the social costs from the sin industries, and as such they are forced to carefully analyze the costs and benefits of each industry. What is the goal of introducing new forms of gaming to a state? Perhaps it is to maximize revenue, but much more likely is that strategies of limited expansion are followed. Is the goal of tobacco tax policy to reduce smoking, increase revenue, or in some cases, to support the very industry itself? These are not easy questions to answer for state legislators.

In order to attempt to give some answers these questions this pa

First, while cigarette makers could no longer advertise, the anti-cigarette smoking groups were no longer free access to play their anti-smoking advertisements. The anti-smoking advertisements had proven to be much more powerful in persuading current smokers to quit smoking than cigarette commercials in making cigarette smoking to be glamorous. Second, the cigarette warning label was not only largely ignored by cigarette smokers (as is the case with alcohol warning labels) but has provided cigarette makers with much legal comfort in their legal battles concerning their liability in regards to wrongful deaths of cigarette smokers.

Ironically, this period of renewed regulation of the cigarette industry resulted in higher profits due to the fact that the industry spent significantly less on advertising and it also allowed the cigarette firms to diversify into the food industry with Phillip Morris' purchase of Miller Beer and General Foods and RJR's purchase of Nabisco.

On December 20, 1985, Surgeon General C. Everett Koop announced the results of research on the effects of "second-hand" smoke or the passive smoking issue (Department of Health and Services, 1985). The most controversial finding of this report was that there was a significant increase in the rate of lung cancer among nonsmokers in households where nonsmokers were living with cigarette smokers. This report sparked off a flurry in two areas: first, state legislators became extremely active in regulating where smokers could smoke; secondly, the excise tax increases became much more common and pronounced. Figure 1 and Figure 2 illustrate this renewed interest in state regulation of the cigarette industry.

Figure 1: Excise Tax Rates 1990

# of Prohibitive Laws Passed	Excise Tax Level: Low Level (2-20/pack)	Mid Level (21-49/pack)	High Level (50+/pack)
0-5	Alabama Georgia Indiana Kentucky Mississippi North Carolina Tennessee West Virginia Wyoming	Arkansas New Mexico Texas	Arizona Wisconsin

# of Prohibitive Laws Passed	Excise Tax Level: Low Level (2-40/pack)	Mid Level (41-60/pack)	High Level (61 to 150/pack)
0-5	Alabama Georgia Indiana Kentucky Mississippi New Mexico North Carolina Tennessee West Virginia Wyoming	Arizona Indiana Texas	
6-11	Colorado Idaho Iowa Lousiana Oklahoma Nevada South Carolina South Dakota Virginia	Minnesota Nebraska North Dakota Ohio	Alaska District of Columbia Hawaii Illinois Maryland Massachusetts Michigan New Jersey Oregon Pennsylvania Rhode Island Wisconsin
12-14	Delaware Florida Missouri Montana	New Hampshire	California Connecticut Kansas Maine New York Utah Vermont Washington

These two figures certainly illustrate the powerful effect that the “passive” smoking issue had on state public policy makers. In terms of the number of smoking prohibition laws, the vast majority of states were prohibiting cigarette smoking in public places and the only real battle ground left for the cigarette industry was whether or not smokers could smoke in bars or restaurants. Even international airline flights now had banned all cigarette smoking.

The other striking aspect is the large increases in the excise tax rates. In 1990, the state excise tax rates on cigarettes ranged from $02/pack to a maximum of $.65/pack. By 2002, there were three states with excise tax rates of $1.50/pack! In fact, the average state excise tax rate on cigarette increased from$.32/pack in 1990 to $.68/pack in 2002 and by 2005 to $1.00/pack. (www.tobaccofreekids.org). During the same period, the federal excise tax rate on cigarettes doubled from $.16/pack to $.32/pack! While Congress and most state legislatures were heeding a call to lower taxes throughout the 1990s, it appears that cigarette excise tax rates were exempt from this trend. Even more startling was how powerless the cigarette industry was in fighting against these increases. Clearly public sentiment had turned against the cigarette industry.

The Gambling Industry (1964 to the present)

Just as 1964 became a landmark year for the US cigarette industry, that same year also became the year when its cousin in the “sin” industries, the gambling industry began a revival that has not abated in the forty-three years that followed. Prior to 1964, gambling was confined to two venues. In 1933, Nevada legalized casino gambling and it established Las Vegas as the “Meca” of casino gambling. The other outlet was pari-mutuel betting on horse and dog racing which portrayed itself as a sport. But overall, gambling was considered an unacceptable social activity. Figure 3 gives a reader a brief history of gambling in the US.

Beneficiaries: Southern States offered prizes through the US mail in order to gather declared a success because most of the tickets were purchased by customers who did NOT reside in New Hampshire.

Illinois, Mississippi, Missouri and Indiana. This form of casino gambling at first had a great of restrictions placed on operators. For example, the boats actually had to cruise and

The public not only tolerates additional gambling opportunities but in many ways demands the common good versus the individual’s right to choose freely. It has resulted in what we call the “Ethics of Sacrifice” and the “Ethics of Tolerance.”

Ethics of Sacrifice

When “sacrifice” is used as a moral concept to advance the merits of a particular public policy issue, public policy makers must be able to persuade the public that the public must “sacrifice” some “right” (think of the War on Terror and the right to privacy) or benefit in order to achieve a noble goal or end. Most moral arguments that have a religious basis utilized this type of rationale, i.e., sacrifice in order to please God. It is also be employed by political leaders during times of crisis, especially times of war such World War II or the War on Terror. In terms of traditional ethical or moral categories, the “Ethics of Sacrifice” is teleological, i.e., it is goal or end oriented. This goal is the “good” of society and one can ascertain whether or not a public policy measures is correct if it contributes to the “good” of society.

In terms of public policy, the “good-end” is a harmonious society. Traditionally, this ethic has been invoked by those who wish to maintain social institutions and structures that they deem as desirable and should be maintained at any cost. While some might associate this type of ethical thinking with “conservative” public policy makers, it actually has been employed by both liberals and conservatives to justify their stances on public policy measures. Certainly, President John F. Kennedy employed the “Ethics of Sacrifice” when he made his famous challenge to the American people, “Ask not what your country and do for you but ask what you can do for your country!” It was a time when the President was asking the country to make a sacrifice in order to meet the challenges that lay ahead for the US in the 1960s. In essence, those who utilize the "Ethics of Sacrifice" are asking the public to sublimate what "good"

> well-wishers—to strive for excellence in all things and to promote
> the highest ideals (*The Good Society*, 1991)

The advocates of the "Ethics of Sacrifice" equate the preservation of institutions with the maintenance of the "good" life. Pete Rose's decision to gamble had to be punished severely because his gambling had damaged an institution that inspires people to act virtuously. In fact, gambling should be discouraged or banned on a permanent basis because it does not promote the virtuous life. The decision whether or not a person has the "right" to perform certain actions has to be measured in terms of what effect that action will have on an institution or society at large.

At its most extreme, those who invoke the "Ethics of Sacrifice" can be accused of employing the motto, "The ends justify the means." The individual's ability to decide what is best for herself/himself needs to be subservient to the needs of an institution such as the state, corporation, even Church. The good of society/institution overrides the rights and needs of the individual. This ethic is certainly the one under the military operates. However, when it is applied too rigorously to a society with many diverse parts, it can have many disastrous consequences. One only needs to recall America's Prohibition era to realize that one can not impose virtue on an entire population. Yet, the "Ethics of Sacrifice" calls forth what many would maintain is the noblest of human characteristics, the ability to give of one's self even if that giving is detrimental to that individual.

Ethics of Tolerance

One of the earliest virtues that every American schoolchild is taught is tolerance. In order to escape persecution in England, the Quakers settled in Pennsylvania and are celebrated in American history texts because they permitted everyone to practice their religious beliefs. In founding Maryland, Lord Baltimore also established religious freedom their right to bear arms has to be tolerated to uphold the rights of the minority who wish to have no limits place on their ability to own and utilize guns.

The “Ethics of Tolerance” is based on an American ideal that founding fathers such as Adams and Jefferson insisted be part of the US Constitution that no citizen’s rights can be violated to achieve an end. Government exists to protect an individual citizen’s rights and must not coerce an individual to relinquish a “right” even to preserve an institution that has served society well. It is virtue and a value that in many ways has served a nation of immigrants very well. Immigrants had to be tolerated and protected by the majority in order to promote the diversity needed for a dynamic society.

But like most virtues and values, this conception of “tolerance” has its down side. At its worst, the “Ethics of Tolerance” could promote a rather narrow, selfish focus on the individual. The individual has to find a place in a society and if individuals are going to live in a community then there has to be some sort of hierarchy of “rights” but the “Ethics of Tolerance” provides very few clues about to set this hierarchy. The glorification of the individual that is essential to the “Ethics of Tolerance” makes it quite difficult for a society to be able to challenge the individual to make sacrifices that are necessary in order to preserve those institutions which in turn help that society to function for the common good.

Conclusion

So why did the cigarette industry so fall out of favor with public policy officials? Why has its “sin” cousin, gambling flourished as it has suffered a rapid decline? In comparing the evolution of these two controversial public policy concerns, it would be instructive to analyze the role that the “Ethics of Sacrifice” and the “Ethics of Tolerance” have played in determining how public policy makers view each issue. Let us once again examine how each type of ethical reasoning is utilized by groups that either oppose or support these activities.

Advocates of increase gambling activities (whether lottery, casino, internet gambling or sport gambling) and those who wish to limit government's involvement in the cigarette industry, invariably employ the "Ethics of Tolerance" as their primary moral argument as they make their case in the public policy arena. Their argument for both issues is simply that society must tolerate these activities since individuals have the "right" to engage in them as long as they are not harming anyone else. Of course they will also point out the economic benefits that government enjoys from these industries While they will also acknowledge that these activities might be harmful to a few individuals, the states ought to be able to profit from these activities since the vast majority of smokers and gamblers will continue to smoke or gamble whether or not the state permits these activities. So why shouldn't the state use the profit from smoking and gambling for the "good" causes such as education and aid to the elderly?

the cigarette industry has lost its ability to utilize the “Ethics of Tolerance” to defend its right to exist while the gambling industry has very effectively employed the “Ethics of Tolerance” so much so “a majority of US adults now favor licensed casinos in their own states.” (Harrah, 2006).

Since the advent of the Passive smoking debate in 1993, opponents of the cigarette industry have begun to utilize an “Ethics of Tolerance” argument that they were not able to use prior to 1993. The opponents of the cigarette industry make the following argument: Cigarette smokers no longer have the “right” to smoke because it has been proven that non-smokers are negatively affected by cigarette smoke. In other words, the right to smoke can no longer be tolerated since it interferes with the rights of non-smokers to live in a smoke free environment. Meanwhile, the vast majority of Americans seem to believe that gambling is an individual’s right. Since the individual gambler is not hurting anyone else, then it is quite acceptable for the state to profit from this activity.

In part II of this paper, we will examine whether shift in ethical thinking has had any impact on public policy towards treating the social costs associated with gambling and tobacco usage.

II.) Public Policy Implications

Data Collection

spending on problem and compulsive gambling comes from a variety of sources, depending upon the state. The last known aggregation of data like this was in 1998 and was commissioned by the North American Association of State and Provincial Lotteries (NASPL). Their data collection was based on a survey which was sent to state governments, local affiliates of the National Council on Problem Gambling (NCPG), lottery commissions, and casino operators. These groups self-reported contributions made to problem and compulsive gambling. The NASPL is planning on conducting another survey into state spending on problem gambling in 2006.

However, with that data unavailable, we attempted to piece together state spending on problem and compulsive gambling with public information. When looking at state revenues from gambling, we looked at five main categories: commercial casinos, racinos, Indian casinos, noncasino devices, and state lotteries. The American Gaming Association (AGA) has made publicly available all of the data used for commercial casinos and racinos. Indian casino revenue generally does not make its way back into state coffers, unless the tribal compacts between the states and the tribes specifically allocate some monies. For instance, in Arizona, the tribes must pay a certain percentage of net win to the state's general fund, part of which is allocated directly to problem gambling programs. In Connecticut, the two tribal nations that do have casinos pay an annual fee to the state, which essentially amounts to a non-compete agreement, where the state of Connecticut agrees to allow a monopoly on gaming activities to the two extant casinos. Noncasino device revenue is only included for Connecticut and Montana, because each of these states publicly reported additional gaming revenue from charitable gaming and video game machines, respectively. Finally, state lottery websites publicly disclose the net revenue that returns to state coffers, after prize payouts and administrative costs. The figures are included irrespective of how the state chooses to use the dollars, whether for general fund contributions, education, property tax relief, or otherwise. All data is from the most recent year available, usually calendar 2004 for the non-lottery revenue and fiscal 2005 for the lottery revenue. Due to this, census figures from the U.S. Census Bureau that were used to calculate per capita numbers are from 2004. A detailed listing of state by state data and sources is available in the Appendix.

It is important to note that the revenue figures do not truly reflect the gross economic benefit (before any social costs) of gambling. The lottery revenues do not account for the federal or state income tax on winnings. They also do not count the jobs created within the lottery commissions and possibly in lottery outlets. This is even true in the case of non-lottery forms of gambling. The American Gaming Association reports gaming tax revenue in the state of Mississippi to be $333.01 million. This does not even count the 28,932 jobs that result in $1.009 billion in casino employee wages. (American Gaming Association). The large economic impact of casinos is one of the reasons why states have taken increasingly more positive stances towards their introduction. In summary, the economic benefit is difficult to measure, though perhaps not as difficult as the social costs.

State reporting on problem gambling spending is even more dispersed than revenue reporting. The data was culled from a variety of places, from lottery websites, to state-sponsored gambling studies, to newspaper articles, to legislative appropriations. Data was also used from the Association of Problem Gambling Service Administrators, the North American Association of State and Provincial Lotteries, and the National Council on Problem Gambling. Once again, this data is what is most recently available, and per capita amounts of spending are calculated based on 2004 U.S. Census figures. State by state data and sources are available in the Appendix.

It is important to note that these numbers are clearly much lower than what states actually spend on problem gambling. For instance, almost all state lotteries spend some money on running 24-hour problem gambling hotlines, which is not reported. Private contributions to problem gambling services are also not counted, unless the contribution is part of a tribal compact or a legislated agreement between the state and the commercial casinos/racinos. In most cases, state mental health spending and other medical spending for gambling addiction is not reported separately, and as a result is not included. As in the case of the revenue figures, it is important to consider how much higher the actual social costs are than the reported spending numbers. It is probably the social costs, as hard as they are to estimate, that are the relevant costs for policy makers as they attempt to set optimal tax rates.

Tobacco

Data for the tobacco industry is much more readily available and is aggregated. This paper uses tobacco revenue and state

Presented above are the summary statistics for the gambling revenue and addiction spending data in the Appendix. Clearly, not many of the states spend a significant amount per capita on problem gambling treatment and prevention (median = 0.08). The Pearson Correlation Coefficient, which measures how the relationship between the revenue and the spend, is .63. This is Intuitively, the and I hypothe si

Tobacco

Figure 5

		Tobacco Revenue Per Capita		
		Top 25%	**Middle 50%**	**Bottom 25%**
Spending Per Capita	**Top 25%**	Alaska	Arkansas	Colorado
		Delaware	Minnesota	Mississippi
		Hawaii	Montana	
		Maine	North Dakota	
		Vermont	Washington	
			Wyoming	
	Middle 50%	Massachusetts	Arizona	North Carolina
		New Jersey	California	Oklahoma
		Oregon	Illinois	Utah
		Pennsylvania	Indiana	Virginia
		Rhode Island	Iowa	
			Louisiana	
			Maryland	
			Nebraska	
			Nevada	
			New Mexico	
			New York	
			Ohio	
			South Dakota	
			West Virgina	
			Wisconsin	
	Bottom 25%	Connecticut	Florida	Alabama
		Michigan	Idaho	Georgia
		New Hampshire	Kansas	Kentucky
				Missouri
				South Carolina
				Tennessee
				Texas

Descriptive Statistics

	Revenue	Spending
25%	24.25	0.66
Median	44.77	1.81
50%	60.38	4.28

Pearson Correlation	**0.185**
Sig. (2-tailed)	0.199

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www.tobaccofreekids.org. This website contains a wealth of information about cigarette excise tax rates as well as smoking prohibition laws.