

Why is it (also) so difficult to legislate gambling in Spain? 'Déjà vu' of what occurred with alcohol

¿Por qué (también) es tan difícil legislar sobre juego en España? Un 'déjà vu' de lo ocurrido con el alcohol

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Some years ago, the journal *Adicciones* entitled one of its editorials “*Why is it so difficult to legislate alcohol in Spain?*” (Rodríguez-Martos, 2007), denouncing how incomprehensible it is not to adequately legislate to prevent alcoholism in our country, especially after observing the positive effects that legislation of tobacco had for public health. Today, with regard to gambling addiction, we find ourselves in a very similar situation to the former one of alcohol, although perhaps more severe because the recent regulatory measures for gambling imply the promotion of an activity that is the main cause of compulsive gambling, considered as a mental disorder both by the World Health Organization (WHO) and by the American Psychiatric Association (APA). In scientific and clinical fields, it is considered an addictive disorder and was reflected as such in *DSM-5*, the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders* (APA, 2013).

In spite of the severity of the problem and the positive correlation between the availability and accessibility with gambling, the successive regulations on this subject in our country have been exponentially increasing the offer of gaming and the gambling access as well as the attractiveness of such games and their publicity. At the present time, we are in a situation of absolute permissiveness regarding gambling, and it seems that the authorities are not aware of the risks of excessive promotion of gambling for citizens' health and well-being, and that regulatory measures are the best way to prevent gambling addiction.

The history of the legislation on gambling in Spain is really remarkable. We have one of the oldest regulations in the world on gambling, such as “*El Ordenamiento de Tafurerías*” [*The Tafurerías Ordering*] of Alfonso X el Sabio, which was actually a code containing a series of measures to punish dishonest behaviors in gambling, with penalties corresponding to Castilla of the Low Middle Ages. Six centuries later, in 1812, in the midst of the War against Napoleon, the National Lottery was established as a form of revenue, as Carlos III had done several decades before with the Neapolitan Lottery, which can be considered the predecessor of the current Primitive Lottery. This coincides with a turning point in the regulation of gambling because, as of the 19th century, gambling ceases to be essentially private (that is, between players) to become an economic activity of the first degree in two relevant dimensions: on the one hand, as a form of tax collection for the State, by means of lotteries and other minor drawings; and on the other hand, as a lucrative activity through which some companies promote business whose benefits are based on what players bet (and lose). The casinos and gambling lounges are born, mainly linked to economically favored social environments, where the ruling classes gamble. From then on, and to the degree to which it is an activity whose economic regulation depends on the State, all gambling that was not expressly allowed was considered forbidden. This restriction reached the height of prohibition during the dictatorship of general Franco – according to some, due to the dictator's

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rejection of gambling because his father had been a gambler – a period in which gambling was considered a vice.

In our recent history as a democratic society, there have been two very relevant milestones in the legislation of gambling and the implications of these regulations on problem gambling. We refer to the Royal Decree 16/1977 and the more recent Law 13/2011 of Gambling Regulation, to which we will refer later on.

Gambling was fully legalized in Spain in 1977. As mentioned, during the Franco regime, most gambling was forbidden, and only the National Lottery, the ONCE sweepstakes, the sports pools, and some minority bets (mainly, greyhounds and horses) were permitted. After the death of Franco, gambling was legalized as a form of attraction of foreign tourist capital and catchment of Spaniards who went to bet in neighboring countries, mainly the casinos of France. Bingos, casinos and 'recreational betting machines with prizes' (known as "tragaperras" [slot machines]) were legalized, and the sector was liberalized, allowing gambling to become a business activity. Bingo halls and casinos opened, and, very particularly, slot machines were installed in bars and restaurants. From then on, with regard to addiction, slot machines became responsible for more than 80% of the cases of problem gambling in Spain.

Regardless of the structural features of the machines, which make them potentially more addictive than any other type of gambling due to the immediacy of the reward, which is based on variable reinforcement programs, or to the fact that they induce cognitive bias that encourages continuing to play in spite of recurrent losses, two particularities, unrelated to the machines but directly related to the regulatory aspects, have fostered their most addictive effects. These are their tremendous availability and easy accessibility.

With regard to their availability, since gambling was legalized, slot machines were implemented in all the restaurants and bars throughout Spain and although in fact, this is not exclusive of Spain, it is not the norm in most countries, with the aggravating circumstance that bars are a sociologically central element in our society. The proliferation of slot machines in many catering establishments is explained by the serious deficiencies in the regulation of gambling by the Ministry of Home Affairs of the Unión de Centro Democrático [UCD - Central Democratic Union], as well as by the uncontrolled grant of licenses during the early governments of the Partido Socialista Obrero Español [PSOE - Spanish Socialist Worker's Party], a situation that was exploited – and even prompted – by some companies to become in the real owners of the sector of slot machines, practically in a regime of oligopoly. Currently, there are more than two hundred thousand slot machines, many more than in Las Vegas, distributed throughout the entire Spanish geography in most of the bars. We should also take into account that in bars, people are usually drink-

ing alcohol, and this hinders the necessary behavioral control the gambler needs to avoid being immersed in a maelstrom of gambling, and the consequential loss that every game of chance provokes when people bet with excessive frequency.

With regard to accessibility, in contrast to bingos and casinos, in which one must identify oneself to enter the lounges, bar access is free, without the need to register or perform any other special requirement in order to gamble. Moreover, the mechanism of gambling is simple, as the greatest complication required by these machines is to insert a coin into a slot and press a button or lever: as simple as it is cheap because you can even play with twenty cents.

That is, in Spain, any person finds in their near environment many slot machines – which are the most addictive games – in places where people normally drink alcohol, – which hinders control and favors risk behaviors, – and there is no need for any type of accreditation which might limit excessive gambling. As a consequence of this, until the arrival of online gambling, 40% of the money spent in all the legal games of chance was spent on these machines; in 2015, it was nearly ten billion euros, coin by coin.

As in the case of alcohol and other drugs, the crux of the matter is that both the availability and the accessibility are two of the main factors involved in the development of addiction, can be controlled with appropriate regulatory systems; that is, with appropriate laws and regulations that would set as one of their main goals the prevention of addictive disorders. Like with alcohol, that is currently one of the main challenges of the Spanish legislation in the issue of gambling.

Regulation Initiatives

The development of the information and communication technologies (ICT) has also led to a revolution in gambling. Currently, games are much more accessible thanks to electronic devices, and the connection to Internet has led to the development of new gambling modalities and an increase of the offers, that is, higher availability. In this field, the legislator arrived late, to the extent that when it proposed to legalize online gaming through Law 13/2011 of gambling regulation, online gambling businesses had been operating for a long time in Spain illegally, or alegally (because they had none authorization), although not clandestinely, because for years, they had been visible, with the sponsorship of teams from the Professional Soccer League. The paradox is that gambling advertising was banned for casinos, bingo halls, and slot machines, whose activity was regulated and legal, whereas sports pools or online poker companies not only performed this activity abnormally, but they also had a huge media presence.

One of the motivations of Law 13/2011 of Gambling Regulation was the prevention of problem gambling and, to this effect, the Advisory Council of Responsible Gambling was created, a consultative body whose decisions were not binding for the Government and whose main goals were to propose a Responsible Gambling Strategy and to advise on issues concerning the implementation of the law that involved the promotion healthy gambling habits.

With regard to the Strategy, the members of the Advisory Council who subscribe to these lines proposed a regulation model that was presented both in the Congress of Representatives and in the “Dirección General de Ordenación del Juego” [Directorate General for the Regulation of Gambling] (DGOJ), but these recommendations were ignored by the Government and were rejected by the companies of the sector that are part of the Advisory Council. Some of the substantial aspects of this proposal appear in the article of this same journal: “Regular el juego para prevenir la adicción: hoy más necesario que nunca” [Regulate gambling to prevent addiction: More necessary today than ever] (Chóliz & Sáiz, 2016).

Other recommendations that we proposed in the field of gambling regulation, such as the prohibition of marketing strategies that induce excessive gambling (for example, welcome bonus) or the legalization of online slot machines, were not taken into account. In fact, bonus tokens, which were initially only used in online poker, have been extended to other types of betting, whereas online slot machines are the kind of online gambling that is expanding the most with regard to spending. According to the DGOJ data, only in the first quarter of 2016, Spaniards spent more than 247 million euros on this type of gambling machines (DGOJ, 2016a). We have gone from having two slot machines in each bar to having them on every one of our mobiles.

The responsible gambling strategies applied by the companies only are generic recommendations, presented as if they were the legal conditions of the small print of a contract, to which one has access by tracking through the web, after dodging all sorts of banners, ads, or advertising pop-ups and marketing strategies that incite to gamble and that are irresistible for the pathological player. Among the seals of quality, granted by private associations that are not necessarily related to the promotion of health, is that of Ministry itself, called “Safe Gambling”. It is an equivocal logo, because it gives the gambler a false sense of security, as it is backed by the Administration itself, but all it means is that the company is authorized to operate. That is, rather than “Safe Gambling,” it means “Legal Gambling.”

By last, the DGOJ’s webpage of responsible gambling, called “JugarBien.es” [Playwell.es], is also at issue. While it agrees that information about prevention is necessary, the Administration cannot just remain fixed at this point and not take the necessary preventive measures based on regulation, especially when the information about gam-

bling is presented in a naive fashion, minimizing the risks of gambling and the consequences of problem gambling. Nevertheless, the most questionable aspect of this initiative is that it attributes the responsibility of the disorder to the gambler for not playing adequately, when the fact is that the environmental conditions incite excessive gambling, and the pathological player, by definition, is unable to stop playing. And the environmental conditions, as we are observing, are regulated by means of the corresponding legislation.

But when it comes to the legislation of gambling, not everything can be attributed to the State government. The Autonomous Communities are competent in matters of private gambling (casinos, bingo halls, and slot machines) and also in betting with machines. These betting machines are located in gambling halls – whose number has grown spectacularly in the last two years – , as well as in bars, depending on the regulations established by each autonomous community, so that currently, we find betting machines beside the slot machines in catering establishments. The story of 1981, when the sector caught the UCD Government by surprise, is repeated. The difference is that now we know the negative effects of placing these machines in bars, and for a long time, the necessary regulatory measures of limited access to them have been demanded, as a measure of prevention of gambling addiction.

The situation is so serious that, in less than three years since legalization of online gambling, it is the second cause of gambling addiction for patients seeking help for their problem gambling – only followed by the slot machines – and now, the online gambling is the main cause of addiction in young people (Chóliz, 2015).

Is it possible to prevent it without controlling environmental exposure?

No doubt, there are personal vulnerability factors for gambling addiction but, as with alcohol, the environmental factors encourage and trigger the onset and development of this pathology to a greater extent. Gambling is socially acceptable, it coincides with many of the prevalent values of our society about obtaining easy money and it is even an example of speculative activity, which is how the market economy obtains its greatest monetary benefits. Moreover, since the legalization of online gambling, its presence in the mass media through advertising and commercial strategies has grown exponentially. According to data from the Ministry of Finance, in 2015, the online gambling companies spent 164 million euros on advertising and promotion (DGOJ, 2016b), which is more than twice the amount that they contribute in gambling taxes to the Ministry. This leads to the fact that online gambling is currently pervasive in the mass media because, to make matters worse, there is no law specifically governing the publicity and commercial

strategies of gambling. Thus, the problem is not that there are no preventive campaigns against gambling addiction, or that there is a benevolent conception of this activity, but that it is being promoted and encouraged irresponsibly.

It is surprising that, nearly four years after the concession of licenses to operate, there is still no specific regulation of the publicity and the commercial techniques of gambling. The Administration has left the regulation of advertising in the very hands of the sector, by means of a self-control code, instead of establishing concrete measures such as those taken in the case of tobacco and alcohol. This code of behavior about commercial communications, called *Self-control*, is patently insufficient, as it does not take into account the special characteristics of gambling advertising, nor does it distinguish between commercial communication and incitement to dysfunctional consumption. Moreover, not even all the companies of the sector have signed it.

We cannot forget that the State, in its dual function of regulator of gambling and guarantor of citizens' security and well-being, must fulfill its obligation to clearly define the advertising limits and accurately specify the rules under which one can advertise an activity that, as has been scientifically demonstrated, is potentially addictive and the cause of a severe psychological pathology that frequently has very serious consequences. Meanwhile, not only are the addictive effects of gambling not prevented, but this activity is promoted and encouraged, seeking new market niches in the youth.

Can we prevent pathological gambling without legislation?

In one of the most comprehensive and rigorous reports about the prevention of excessive gambling carried out by investigators of the *Alberta Gambling Research Institute* (Williams, West, & Simpson, 2012), it is concluded that the only really efficacious way to prevent pathological gambling is through gambling policies, that is, by means of regulation. This same report states that other types of measures, even educational ones, although somewhat useful, are not efficacious unless there is an adequate rule that legislates the availability and accessibility of games of chance.

In this sense, the fact that the regulation of gambling has gone from depending on the Ministry of Home Affairs to the Ministry of Finances is no less relevant. Irrelevant as it may seem, in our view, this fact is essential to understand the shortsightedness that is sometimes observed in the authorities about the risks of an economic activity they are obliged not only to monitor, but also to regulate. Regulation doesn't end with the legalization of gambling; that is only the beginning, at least with regard to the prevention of gambling addiction.

Lastly, this need to properly legislate for the prevention of gambling addiction is not only noted and defended from

the clinical and social spheres, but also demanded in the Report of the European Parliament on online gambling in the internal market (Fox, 2013). This report clearly shows that gambling "*is not a conventional economic activity because of its possible negative social effects, in particular problem gambling, with consequences and costs that are difficult to estimate...*", that "*due to the special nature of online gambling, the protection of human health and of the consumers must be the essential guiding principle when developing recommendations at the EU level and legislation at the national level*" "*... the Court of Justice has confirmed that the offer of gambling games is an economic activity of a special nature in which constraints are justified for compelling reasons of general interest ... such as the public health...*". With regard to advertising, a subject that we discussed in the former section, "*... it reiterates its position that, in a matter as delicate as gambling, self-regulation of the sector can complement the national regulations, but never replace them.*"

To conclude, we must remember that gambling is not a conventional economic activity, but rather the business profits of the gambling companies come directly from what players lose when they bet. If we take into account that those who bet the most – and lose the most – are pathological gamblers, people suffering from a mental disorder, the regulation of this activity must be subject to special measures to prevent, as much as possible, the onset of one of the mental diseases that causes so much unhappiness in patients and their families. Therefore, once and for all, it is necessary to legislate gambling from the different State administrations (State and Autonomous), considering that gambling is not a conventional economic activity, but instead that it has serious health risks that should be prevented by means of adequate gambling policies that are based on the evidence provided by science.

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