

Chapter 1

THE BIRTH OF GAMBLING AS A MEDICAL OBJECT OF INVESTIGATION

It All Began as a Negotiated Moment
amongst Wider—Radical—Discursive Negotiations
Already Taking Place

The moment was a pre-trial hearing held before the honorable José A. Cabranes. The date was 22 September 1983. The location was the United States District Court, Second Circuit. The Second Circuit pre-trial hearing came in the aftermath of an unprecedented move on the part of the prosecution. The prosecution asked Judge Cabranes to reverse centuries of legal tradition and institute a change so radical that only two states had so far adopted it. On 16 May 1983, the prosecution submitted a Brandeis-Brief requesting that the insanity defense be abolished. Judge Cabranes, taken back, stated that the gutsy request was “without parallel in American law . . .” (United States v. Torniero, 570 F. Supp. p.722, 1983). In anxious response, the defense submitted their own brief on 13 June 1983.

The cause for this federal, pre-trial hearing was John Torniero. On 23 September 1982, John Torniero was charged with ten counts of interstate transportation of stolen property. Torniero had worked as a store manager for Michael’s Jewelers in New Haven, Connecticut. Over a two

year period Torniero repeatedly stole diamonds from his employer and, either by himself or with the help of others, transported the jewels across the Connecticut–New York border. Once in New York, he took the jewelry into an area of New York City known as the “Diamond Exchange” and sold them. To cover himself, Torniero falsified various invoices, inventories and other records. Somewhere during the two year period in question, the owners of Michael’s Jewelers hired a private investigator. The investigator figured out Torniero’s scheme and had him arrested. Testimony at the trial indicated that Torniero’s thievery amounted to roughly \$750,000 dollars in loss to Michael’s Jewelers.¹

What made this case so important weren’t the charges Torniero was facing. Putting forth a defense of insanity was nothing new. What made this case so controversial, and caused the prosecution to react so strongly, was the line of defense taken by Torniero’s attorneys. They argued that Torniero was legally insane at the time of his crimes because he was a pathological gambler. Shortly after his arrest, Torniero was taken to see Dr. Marvin A. Steinberg, a licensed psychologist. After their first session, Steinberg diagnosed Torniero as suffering from the mental disease *pathological gambling*. Being a pathological gambler meant that Torniero was “chronically and progressively unable to resist impulses to gamble” (American Psychiatric Association 1980, p. 291), which meant that he was unable to resist the impulse to steal to keep his gambling going. At the time of the trial, Steinberg was quoted as saying “Due to Mr. Torniero’s condition of pathological gambling, he was unable to conform his behavior to the requirements of the law.”²

There Were Wider—Radical—Discursive Negotiations Taking Place at the Time of Torniero’s Case

The reason a defense of insanity based on pathological gambling caused such a stir was because in 1983, unlike alcoholism or drug addiction, the legal aspects of the medical diagnosis of pathological gambling had yet to be worked out in a court of law. With the publication of pathological gambling as a medical disorder in the 1980 edition of the DSM-III (*The Diagnostic and Statistical Manual of Mental Disorders*, 3rd Edition, published by the American Psychiatric Association), at once the problems associated with it changed from vice to disease.

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The essential features are a chronic and progressive failure to resist impulses to gamble and gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits. . . . Characteristic problems include loss of work due to absences in order to gamble, defaulting on debts and other financial responsibilities, disrupted family relationships, borrowing money from illegal sources, forgery, fraud, embezzlement, and income tax evasion. (American Psychiatric Association 1980, p. 291)

With the publication of the DSM-III, a shift in the discursive history of gambling took place and a new medical problem was born. It didn't matter that pathological gambling was classified as an impulse control disorder and not as an addiction. All that mattered was that it had entered the psychiatric and mental health literature. It had an entirely new status and existence. Under the guiding intellectual support of certain key researchers and clinicians in the field of mental health, pathological gambling emerged as a major challenge to the legal, governmental, economic, political, religious and cultural definitions by which gambling had been previously defined, understood, and treated since the late 1800s. If Torniero had been arrested just three years earlier, in 1979, his defense of insanity would have been impossible. His case would have been just another day in court. Because it took place after 1980, things were different. After 1980, a shift took place. The medical model now stood as a challenge to the legal, thereby challenging our cultural and political conceptions of gambling in courtrooms across America.

An important article during the 1980s cataloging the challenges pathological gambling brought to the legal system was written by the noted gambling law professor I. Nelson Rose. Rose's article was part of a special edition for the *Journal of Gambling Studies*, which was, and still is, the only journal specifically devoted to the topic of pathological gambling. The subject of the special edition was "Compulsive Gambling and the Law." In his article Rose (1988) wrote:

The idea that compulsive gambling is a disease is in direct conflict with the dominant view in the law that gambling is a vice. Under the traditional view individuals who gamble to excess

are morally weak and deserving of punishment. The recognition of “pathological gambling” as an official mental disease or disorder by the American Psychiatric Association in 1980 created an irreconcilable contention: American law never punishes an individual for being sick. The conflict can be seen in every area of the law and even between judges sitting in the same courtroom. The most dramatic disputes have been over the insanity defense; but, the disease argument has been raised, sometimes successfully, in other criminal cases, to mitigate sentencing, in attorney disbarments, tax cases, bankruptcies, divorces, personal injury claims, and, most significantly, in claims against casinos. The legal disputes will spread and become even more heated as the disease diagnosis becomes more generally accepted. (P. 240)

During the 1980s, Torniero’s case was only one of a number of court cases at the state and federal level challenging the legal definitions of insanity as well as the court’s understanding and treatment of pathological gambling and its problems. By 1981 two different defendants had already used pathological gambling as an insanity defense and won. The first was in Torniero’s home state of Connecticut (*United States v. Lafferty* 1983). The second in New Jersey (*United States v. Campanaro*) (See also Rose 1988). Other court cases were not as successful. In the *United States v. Lewellyn* case (1983), the defense tried to convince the Eight Circuit Court of Appeals that their client was not guilty of attempting to embezzle \$17,000,000 in securities because he suffered from pathological gambling. The court didn’t go for it, arguing that a sufficient causal relationship couldn’t be established between pathological gambling and criminal activity that “could be considered binding upon the legal system” (Cunniën, 1985, p. 91). In another case, Genevieve Banks tried to counter-sue Resorts International for \$75,000 in losses. Banks claimed that Resorts International, who happened to be suing her to recover a \$1,000 gambling debt, owed her the money she lost at their casino because she was a diagnosed pathological gambler. Disagreeing with Banks, “the Superior Court of New Jersey granted Resorts’ motion for summary judgement and dismissal of the counter-claim on the ground the casino had followed state law in issuing credit” (Rose, 1988, p. 255).

Pathological gambling was also being used to assuage the severity of sentencing in both criminal and civil cases. For example, a Louisiana lawyer who had been convicted of felonies involving “deceit and dishonesty” was given only a two-year suspension because he suffered “from a psychological or emotional disorder consisting of a compulsive or addictive gambling habit or disease” (Rose, 1988, p. 248). Instead of sentencing him to jail, “the court put great weight on the lawyer undergoing medical treatment, attending Gamblers Anonymous, and ‘making a sincere effort to rehabilitate himself and to recover from his illness’” (Rose, 1988, p. 248). And, in a civil case, Mr. Milton H. Guillot sued his employer for firing him without notice or explanation. After being fired, Milton “suffered a nervous breakdown, was hospitalized and, after being released, continued to have emotional troubles, including compulsive gambling and heavy drinking. The Louisiana Court of Appeal affirmed an award of partial disability workmen’s compensation” (Rose, 1988, p. 253).

Throughout the 1980s and 1990s, the medical discourses of pathological gambling would continue to challenge the judicial system. In each case the definitions of right, responsibility, treatment and punishment were questioned. By reconstructing excessive gambling as an entirely new medical phenomena, the mental health industry birthed a *new* social problem; a new social problem that not only required transformations in law, but extended outward through a web of discursive negotiations crisscrossing any and all of the various fields and formations pertaining to gambling to affect the way Americans think about the problems of gambling. While Torniero’s day in court was unprecedented, it was merely one instance, a symptom if you will, of the wider, radical discursive negotiations taking place at the time.

The Compulsive Gambler Suffers from a Disease of the Mind

While the medical model of pathological gambling obtained a position of professional authority in the 1980s, it has been around since the 1940s.

The year was 1943. An article titled “The Gambler: A Misunderstood Neurotic” was published in the journal *Criminal Psychopathology*. The article was written by Edmund Bergler, who, with this publication, marked with ink the beginning of a new history.³ While 1943 marked the beginning, it wasn’t until 1958 that Bergler finally published his classic *The Psychology of Gambling*. It is the book most often cited today as the official

starting point of the medical investigation of excessive gambling. In the preface Bergler outlined his view:

Boiled down, the popular concept of a gambler is that he is a person who wants to make as much money as he can with the least expenditure of time and effort. The unconscious reaction of the average person to the gambler is mixed. Secretly, he admires the gambler when he wins and gloats when he loses, as if to say: "Why should he achieve what ordinary people cannot?" What is never asked is this decisive question: "Does the gambler really *want to win*?" Gambling, in the popular mind, is a dangerous and difficult activity, but one which is none the less *rational*.

Some people object to gambling, but their objections have moral, religious, or social reasons. When the psychology of gamblers is viewed through the psychiatric-psychoanalytic microscope, it becomes clear that the basic problem is precisely that point which is erroneously taken for granted and considered self-evident: the gambler's apparent aim to win. I submit that the gambler is not simply a rational though "weak" individual who is willing to run the risk of failure and moral censure in order to get money the easy way, but a *neurotic with an unconscious wish to lose*. . . .

The purpose of this book is to substantiate, with clinical proof, the theory that the gambler has an unconscious wish to lose—and therefore always loses in the long run. (1958, p. vii)

With the opening pages of his book, Bergler established the framework for the paradigm shift the DSM-III would finally announce. With these pages Bergler makes a full break with the past by redressing the problems of gambling within the new and powerful discourses of medicine and psychiatry. Bergler defines the pathological gambler outside the domain of sin or vice. In fact, he chastises those who still see excessive gambling within the territory of the rational, the conscious, the ego. Pathological gambling and the problems associated with it are manifestations of a sickness, an illness, an error deep within the psyche. Gone are the days, argues Bergler, when the problems of gambling will remain trapped within the rational. Contrary to the popular, albeit facile mentality, the excessive

gambler is not simply a racketeer, criminal, malefactor, mobster, or con-artist. The excessive gambler can no longer be viewed within these arcane manifestations of legal and moral myth. These pervasive, fashionable perceptions are merely representations of an otherwise unconscious hostility toward the romantic life of the gambler. A series of discursive negotiations must take place between the psychiatric expert and the rest of society. The judge, the attorney, the police commissioner, the average person on the street, they all must be taught to work through their own unconscious archetypal representations of "the gambler" to learn the "true" nature of this disorder: that is, its medical and psychiatric basis. They must come to understand, with sympathy, the pathological person they are dealing with. They must recognize that the pathological gambler is sick. The pathological gambler suffers from a disease of the mind. The pathological gambler is someone who cannot control himself. He is not a loser or a failure. The job of society, in order to correct these problems, is not to punish. Punishment, explains Bergler, is for the criminal, the gangster, the gambler-racketeer not the sucker gambler, the neurotic, the individual with the unconscious desire to lose. If society is going to provide a solution in an attempt to restore order, then it must be in the form of rehabilitation, clinical treatment, hours spent in the psychiatrist's office or in the insane asylum. We cannot confuse the two, the criminal and the neurotic. Bergler (1958) states: "This book is about the neurotic sucker-gambler, hence about psychopathology. The gambler-racketeer belongs in the realm of criminology, and deserves a separate psychological investigation" (p. viii).

During the 1950s while Bergler was fast at work on the east coast establishing the medical model of pathological gambling, Gamblers Anonymous (GA) was getting its start on the west coast. While GA had several false starts in other parts of the country, it finally came together in Los Angeles, California. The first meeting was held on a Friday, 13 September 1957. GA patterned itself after Alcoholics Anonymous (AA). When AA first started back in 1935, it was opposed to the medical model. It endorsed the medical model several years later, however, to gain credibility within the general public because the medical model argued that alcoholism was a mental illness and not simply a matter of a weak will. GA followed suit and adopted the medical model into its own program: "We, at Gamblers Anonymous, believe our gambling problem is an emotional illness, progressive in nature, which no amount of human will-

power can stop or control. We have facts to support this belief” (Gamblers Anonymous 1989, p. 38).

While psychoanalytic treatment and GA existed for pathological gambling during the 1950s and 1960s, it wasn't until the 1970s that pathological gambling gained a greater level of credibility within the larger field of mental health. In the field of mental health, pathological gambling made its first major move toward respectability when Dr. Robert Custer, Director of the Veterans Addiction Recovery Program (Veterans Administration Medical Center, Brecksville, Ohio), established the first in-patient gambling treatment program. Dr. Custer, a psychiatrist who specialized in addiction treatment, was approached by a members of a local GA group who were having trouble with a few of their members who were suffering from severe psychological problems. Working closely with Gamblers Anonymous, Custer and “the Brecksville team established a therapy program. The program was expanded and the first in-patient treatment facility for compulsive gamblers was opened in 1972 . . .” (Rosecrance, 1985a, p. 278). Custer states:

My associate Alida Glen, Ph.D., and I designed a treatment program patterned after the one we were using to treat alcoholics.

The compulsive gamblers were given individual counseling relating mainly to the control of the gambling urge and on practical problems such as marital strife, their debts, the family's financial needs. In addition to that, there was group therapy, where the gamblers got together and, led by a professional psychiatrist, psychologist, social worker or nurse, discussed with each other the way they had gotten into gambling, the problems it had caused them, their feelings of hopelessness, what they thought was wrong with them, their personality defects. In other words, while counseling dealt with the facts, group therapy dealt with their feelings, giving them a chance to ventilate, and to get some insight into themselves and their compulsion. In addition, there were lectures on the nature of the gambling addiction, so they could get an objective view of themselves and their problems. They also went through relaxation training as a way to deal with their pent-up tensions, pressures and agitation. (Custer and Milt 1985, p. 218)

From 1972 onward, both because of his establishment of the Brecksville program and his burgeoning publications, Custer became one of the leading authorities on pathological gambling in the United States. In fact, his book, *When Luck Runs Out*, published in 1985, is the current bible in the field. With the help of Custer, the Brecksville Gambling Treatment Program became recognized as one of the leading treatment programs in the country. It was also Custer who finally got pathological gambling into the DSM-III.

While the work of Bergler and Custer helped pathological gambling increase in its position of power, it remained throughout the 1970s on the margins of mental health and society in general. The reason it remained on the margins wasn't simply a function of Custer needing more time to campaign. Other factors were at work: primarily the gambling industry and state and federal government. When Bergler was writing, gambling was illegal. When Custer was writing, gambling was fast becoming legalized everywhere. Thus, the 1980 publication of the *DSM-III* not only announced the emergence of an entirely new medical disorder, it also announced a legalized gambling explosion.

When Bergler Was Writing, Gambling Was Illegal, Immoral, and Therefore Wrong

In 1958, when Bergler wrote *The Psychology of Gambling*, gambling was still an illegal activity, except for Las Vegas and a few Catholic churches. Of course people gambled during the 1950s and 1960s—gambling had always been and still remains an important part of United States culture. To the mainstream middle-class of the 1950s and 1960s, however, gambling was a morally and legally illegitimate activity. The fact that gambling was illegitimate had a major discursive effect on the construction of Bergler's text, as well as the position and authority of the medical model for the next twenty-two years.

To illustrate my point, let's return to Bergler's preface. In his preface, Bergler makes a distinction between the gangster-racketeer and the neurotic-sucker, which he believes have nothing in common: "The [neurotic] gambler is *unconsciously* driven to gambling, while the racketeer-gambler *consciously* uses gambling, as he would high-jacking, for his *modus operandi*" (Bergler 1958, p. vii, italics in original). While Bergler

distinguished these two types of gamblers, thirty years later articles would be published in journals such as the *Journal of Gambling Studies*, *The Journal of Forensic Sciences*, and *Clinical Forensic Psychiatry* with titles such as “The Pathological Gambler as Criminal Offender” (Rosenthal & Lorenz, 1992), “Criminal Offenses in Gamblers Anonymous and Hospital Treated Pathological Gamblers” (Blaszczynski & McConaghy, 1994), “Crime, Antisocial Personality and Pathological Gambling” (Blaszczynski, McConaghy, & Frankova, 1989), and “Correlates of Pathological Gambling Propensity in Prison Inmates” (Templer, Kaiser, & Siscoe, 1993). And these articles would make claims such as: “Many personality features characteristic of antisocial personality disorders are reputedly found to be inherent in pathological gamblers . . .” (Blaszczynski & McConaghy, 1994, p. 130).

Our question then is: if in the 1990s there is no real clinical difference between Bergler’s sucker and the racketeer (both lie, cheat, write bad checks, steal from their employers, and con family and friends for money to support their habit) why does Bergler maintain such a distinction? The answer? In the 1950s gambling was illegal. Therefore, the discourses of law and religion prevailed. These discourses viewed gambling as a rational activity done with full conscious intent. The only way Bergler could alter these perceptions was to create a discourse that did not encroach upon the disciplinary and legal boundaries of the court or criminal justice system. Bergler (1958) makes the boundary clear: “This book is about the neurotic-gambler, hence about psychopathology. The gambler-racketeer belongs in the realm of criminology . . .” (p. viii). In the 1950s, anyone caught gambling would immediately be viewed as a criminal. Bergler would have had little success convincing politicians or judges that the pathological gambler standing before them had unconsciously embezzled \$500,000 dollars because he had a infantile fantasy to destroy his life and therefore needed a year of psychoanalysis and GA, not prison.

Bergler thought that if people would just take a peek through the microscope of medicine they would see the criminal before them transform into a person with a mental illness: “Some people object to gambling, but their objections have moral, religious, or social reasons. When the psychology of gamblers is viewed through the psychiatric-psychoanalytic microscope, it becomes clear that the basic problem is precisely that point which is erroneously taken for granted and considered self-evident: the gambler’s apparent aim to win” (1958 p. vii). But Bergler was not dumb. He

knew the change in perception he was arguing for would have a limited range of effect. He therefore acquiesced by setting up a discursive boundary between the neurotic and the criminal. As long as neurotics are caught gambling, they remain criminals. But for those neurotics lucky enough to make it into Bergler's office, they are, in the eyes of medicine, not deserving of punishment but treatment. If these same neurotics were arrested by the police leaving Bergler's office, they would once again be criminals.

The boundaries Bergler constructed between the court room and the clinical couch, between the medical profession and criminal justice system, between the neurotic and the criminal, between the pathological gambler and the rest of society would remain "true" for the next twenty two years. And it would have stayed that way if not for the third wave of gambling legalization.

In 1963, the Third Wave of Gambling Legalization Began

In 1963 the third wave of legalized gambling began its sweep across the United States. It started with New Hampshire, which legalized the first state lottery since the 1890s.⁴ New Jersey, New York and Massachusetts were quick to follow. By the early 1990s lotteries existed in over thirty-seven states, and twenty-three states had some form of state sponsored gambling such as casinos, riverboats, dog tracks, horse tracks, off-track sports betting or bingo parlors. The annual revenue from gambling during the 1990s was more than the movie, book, record, park and arcade industries combined (Hirshy, 1994). In fact, in 1993 alone, Americans bet a staggering \$400 billion dollars on legalized gambling—"a figure that grew at an average annual rate of almost 15 percent a year between 1992 and 1994" (Goodman, 1995, p. 2). Looking toward the year 2000, Phil Sartre, President of Harrah's Casinos, one of the world's largest casino companies, estimated that "ninety-five percent of all Americans will most likely live in a state with legal casino entertainment" (Goodman 1995, p. 3).

But why the change? Why did gambling all of a sudden become legalized again? And why so fast? Was it because the general public wanted it? It doesn't seem to be the case. Goodman (1995) states:

One of the most surprising findings of our research is that we didn't come across a single popularly based organization that

lobbies for more gambling. Many other government prohibitions—such as laws against the smoking of marijuana—have inspired popular legalization movements. But not gambling. In fact, when given the chance to make its views known, the public usually rejects gambling. . . .

So if it's not the public, who is behind the push for more gambling opportunities? Two parties are almost entirely responsible: legislators in search of easy answers to tough economic problems, and the gambling industry itself. (P. x)

Prior to 1963, the gambling industry was certainly interested in expanding its business. But, it had to wait for government to make the first move. During the 1970s and 1980s, even though state lotteries were being legalized everywhere, they weren't generating the profits expected. It was at that point that the gambling industry was called upon to help. They knew what games people liked and how to market them. It was only a matter of time, then, before most politicians became convinced that gambling was the way to save their cities and states from financial ruin. Once the doors to legalized gambling were opened, the gambling industry's campaign could not be stopped. The campaign followed two basic steps: first a set of "pro-gambling" discourses were constructed, then these discourses were used to negotiate with others both to gain support and argue against detractors.

Creating a Discourse

The first goal in the campaign was to create a discourse by which an argument for legalized gambling could be made. This discourse had to argue from a position that could overcome the discourses of religion, culture and law still in circulation. The discourse chosen was one based on a combination of economic policy and "scientific" research. The arguments were put forth succinctly: your state, city or town is in economic trouble, you have people out of work, your standard of living has decreased, and you have no other real options available. If you legalize gambling, jobs will be created, money will be given to the schools, your town's economic recession will be lifted, the standard of living will increase, people from out of state will come in to gamble; the restaurants, hotels, malls, bars, and

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stores in your area will make money, and everyone will be happy. We guarantee it.

From the beginning, the business people and local community leaders in the more economically depressed areas of the country were sold. Others, not nearly as bad off, were suspicious. The majority, who were indeed struggling but were not sure what to do, were somewhere in the middle. As Mayor Robert Markle of Springfield, Massachusetts stated: "The city of Springfield had its back to the wall . . . This would not be my first choice, but we don't seem to have a lot of choices right now" (Goodman 1995, p. viii). During the 1980s, as economic decline spread outward into more and more cities, negotiations increasingly turned in the direction of legalized gambling.

To construct their discourses of promise, the gambling industry (or the private firms it hired) conducted numerous "scientific" studies to examine the problems of economic decline, as well as the ways in which legalizing gambling could counteract these problems. In all of these studies, the same basic assumption was made: "With so much untapped demand for gambling in the country, and with so little gambling available, the economic results of expansion could not help but be positive" (Goodman 1995, p. 65). It was obvious, so they argued, that gambling "would create hundreds of millions of dollars in additional public revenues and thousands of new private-sector jobs" (Goodman 1995, p. 65). Because the research was done primarily by the gambling industry itself, or some hired research group, seldom were the problems that came with legalized gambling mentioned. Studies did not directly address the problems of addiction, crime, or its long-term economic consequences. Goodman (1995) elaborates:

While some states have commissioned expensive research, ostensibly designed as an objective aid to policy makers, the research was in fact often prepared just to support the positions of those who had already decided in favor of gambling expansion. For example, one study prepared for the state of Connecticut at a cost of nearly a quarter of a million dollars, by Christiansen/Cummings Associates, a New York research firm with close ties to the gambling industry, concluded that the state's "mature" and sometimes declining gambling operations would soon face competition from a local tribal casino and new

gambling ventures in other states. “Faced with this rather bleak future,” said consultants, “the state of Connecticut *must* consider new gambling options” (their emphasis).

The report made no significant reference to the public and private costs of such “must” options other than to note that compulsive gambling was a problem and that a higher percentage of the state’s population were likely to become compulsive gamblers, and then to make cursory mention that the state should take steps to deal with this problem. Nonetheless, the study recommended that Connecticut provide more enticing gambling opportunities, more lottery advertising, and more incentives for lottery agents to sell more tickets. (Pp. 65–66)

Goodman makes it clear that unstated political biases clearly controlled the outcome of “state sponsored” research. Goodman and his associates explored fourteen studies done for various state and local areas. Goodman (1995) concluded that, of the fourteen studies, ten were unbalanced or mostly unbalanced in their ability to objectively describe “the real public and private benefits and costs to a community or state” (p. 66), and only one was fairminded and balanced in its presentation of the “facts.”

Negotiating with Others

Once the discourses were researched and constructed, the next step was to convince everyone. Some of the most important positions involved in the negotiations included local and state level businesses, community and religious leaders, the education system—which is where most of the money goes—the television and print media, and the middle and working classes. An example of how the process of negotiation works comes from the attempt to legalize riverboat gambling in Ohio.⁵

During the 1996 election year, pro-gambling business, with the help of certain lawyers, tried to pass a bill to legalize limited riverboat gambling. It was called *Issue One*. Three months before the vote I was in Cleveland with some friends. While we were drinking our coffee a man approached us. He asked us if we would like to sign a petition in support of riverboat gambling. He explained to us the advantages of legalizing gam-

bling. “What will Ohio win if riverboat casinos are introduced?” we asked. “Benefits include \$1.28 billion in annual onsite gambling and non-gambling spending, annual operational expenditures of \$172.8 million on Ohio goods and services, and 21,175 new permanent jobs. For a tax of 20 percent on all casino revenues that remain after winnings are paid to participants, the state will receive \$232.2 million annually. In addition, another \$38.1 million in other taxes, including those on property, food and beverages and alcohol, will be collected. Eighty percent of the \$232.2 million in riverboat casino tax revenues, or about \$186 million will be earmarked for Ohio public schools” (Yes on Issue 1 Committee 1996, p. 1). Picking up his clip board he said: “So, would you like to sign my petition?”

I won’t tell you if we signed his petition or not, but I did ask him if he had any other information beyond what he had initially provided. He explained that he worked for a local polling company which had been hired to put the issue on the upcoming ballot. Frustrated with my persistent questioning, he finally said he could care less about the issue. In fact, he was completely ignorant about the issue other than the memorized speech he had given me. I asked him for his business card.

The next week I made a few phone calls to find out who had contacted his agency to go out and do the polling. It was pro-gambling business people—capitalism working at the grass roots level. People were signing the petition with little to no knowledge about the issue. And they were often signing, as I watched, just so the man would go away. They wanted to enjoy their meals in peace. Obviously the tactic worked, three months later the issue was on the 1996 Ohio ballot.

And So Gambling Was Legalized

And so, between the years of 1963 and 1998, gambling was legalized throughout most of the United States. The process was slow at first but picked up speed as one state after another jumped on board. As the number of states legalizing gambling increased, their pro-gambling discourses began to intersect, cross-over and build off of one another, like a disease spreading out across the country, creating a nation-wide epidemic. These interactions were carried through the radio waves. They moved from computer to computer. They crossed through the television and its commercials. They fell upon the ears of those listening or watching the evening

news. They leaped from one business person to the next while discussing gambling profits. They happened as friends and family, visiting from one state to the next, talked about the joys of playing the lottery. They took place when a sports star said "I'm going to Las Vegas after the Super Bowl." They moved outward when a community leader endorsed a new casino. And finally, they gained legislative support as politician after politician wrote them into bills. As this process took place, in and between, through and across, above and below all of the various interactions happening across the country, the majority of people in the United States began to move away from the dominating influence of the moral and legal texts. During the course of these interactions, there were those who remained opposed to gambling. Regardless, as the wave of gambling legitimation crossed from city to city, state to state, moving outwardly inward through all of the various negotiated fields of discursive relations, the dominant view began to move in the direction of legitimization and legalization. High and low, within, between and across every level, old ways of understanding gambling broke down until gambling finally became legitimate and legal. A radical break with the past took place. The larger field of discursive relations concerning gambling changed.

Emergent from this change were new gambling objects of investigation, new concepts and vocabularies, new theories, and new voices of authority. The new discourses and concepts arrived in the form of gambling business theory. The gambler (the gamer) became a rational consumer who was able to make decisions about where and when to gamble. The gambler was a person who enjoyed the activity of gambling strictly for the purposes of recreation and pleasure. The gambler knew how much he or she had available for gambling and knew when too much money had been spent. The voices of authority became the gambling industry and government. The goal and objective of the gambling industry was to provide the gambling consumer with a wide variety of gambling activities and to see gambling legalized in as many states as possible; not because it wanted to create an opiate for the masses, but because it desired, as with any business, to make a profit. The goal of the gambling industry was to generate revenue. Their goal was to minimize cost, maximize output, control quality. They distributed their product, reinvested part of their profits in the company, took the other part home. Businesses competed with others. Casinos, horse tracks, and river boats attempted to put their opponents out of business, beat them in price, overcome them in quantity, and without sac-

rificing a relative level of quality. Competition between gambling businesses helped to build the economy. It provided jobs and money for education. It increased the standard of living and helped to promote the overall economy. Gambling became entertainment. Las Vegas became a place to take the family on vacation and the lottery became something even grandma played on the weekend. The campaigns of state and city governments and their gambling industry counterparts had been, on the whole, incredibly successful. So what was the problem?

The Establishment of the Medical Model

The primary problem during the 1980s and 1990s was that, once the third wave of gambling legalization took off, the boundaries Bergler had temporarily constructed between the court room and the clinical couch, between the medical profession and the criminal justice system, between the neurotic and the criminal, between the pathological gambler and the rest of society, collapsed. There was no longer a clear division between the excessive gambler showing up for in-patient treatment and the excessive gambler showing up for court. Once gambling became legalized, the criminal justice system fell in power, position, and authority. The proper political solutions to the problems of gambling—as evidenced by Torniero’s trial—were no longer clear. The publication of the DSM-III, therefore, not only marked the official emergence of the medical model, it more importantly signaled that a precedent had been set by the process of legalization itself. Legalization challenged the very foundations of law. If everyone was now allowed to gamble, then the legal discourses no longer maintained complete jurisdiction. Pathological gambling, once easily classified as a crime, now appeared complex.

But the courts, as well as the rest of society, didn’t know how to deal with the new complexities. Legalization left the criminal justice system without the necessary tools to deal with the problems they were now facing. As with alcohol, drugs, and other various potential vices, availability always multiplies the number of people who fall prey to the trappings of addiction. Once casinos and lotteries started popping up all over the country, it was understandable that in-patient addiction treatment facilities, local police departments, and the criminal justice system would experience increases in gambling related problems (e.g., crime, credit card fraud, check-

ing and banking scandals, family problems, loss of jobs, psychological breakdown, bankruptcies, inability to pay debts to casinos and bookies, and so on). Of the total population, the people hit hardest by the problems of pathological gambler were the middle-class.

Rosecrance (1985a) explains:

Traditionally, gambling has been tacitly accepted by the working and upper classes (Downes, 1976; Newman, 1972). In contrast, serious and sustained gambling has not been a typical pattern of behavior in the middle-class (Newman, 1968). Until recently, then, middle-class individuals had relatively limited personal or associative experience with gambling and its possible consequences. Lacking such experience, many middle-class gamblers are relatively unprepared for the psychological pressures of losing and winning (Berry, 1968; Beyer, 1978; Martinez and LaFranchi, 1969; Newman, 1975). On the one hand, they have not learned a repertoire of techniques for dealing with the periodic losses that are an integral part of sustained gambling. On the other hand, a large win or "big score" early in the gambling career of a middle-class participant can lead to unrealistic and unfulfilled expectations of continued winnings. The middle-class gambler often has access to lines of credit and other sources of funds that are unavailable to lower-class gamblers. Such resources allow gambling to continue to the point where large debts may threaten the middle-class gambler's financial and social status. (Pp. 280–281)

Because the middle-class, during the 1980s, had access to enormous lines of credit and because they generally lacked the skills necessary to handle the losing phases of gambling, and because gambling fulfills so many other unmet social and psychological needs (e.g., boredom with work and life, retirement, failed marriages, problems with impulsivity and attention deficit, frustration in school, economic depression), pathological gambling began to reach epidemic proportions. Statistics during the 1980s and 1990s reported that about 3.4 percent of the population was addicted to gambling (e.g., Volberg 1994; Volberg and Steadman 1988). In fact, "according to a 1994 Harrah's Casinos survey, the number of American households playing at casinos doubled from 46 million to 92 million be-

tween 1990 and 1993, with more than three-quarters of the increase, roughly 35 million households, at new casinos outside of Nevada and New Jersey” (Goodman, 1995, p. 43). Because of these radical increases in gambling, researchers estimated that roughly 9.3 million adults and 1.3 million teenagers had developed some form of gambling problem (Goodman, 1995, p. 43).

It was at the point of recognizing that pathological gambling was fast becoming a social problem that the medical model moved from its position of marginal status to a relatively central position in the debate over how best to now define, understand, and treat the problems of gambling. But why the medical model? Why not other ways of thinking about pathological gambling?

In the aftermath of rapid legalization, there were two primary reasons why the medical model obtained its position of centrality. First of all, while politicians, economists, entrepreneurs, gambling councils, addiction treatment facilities, and the general public became increasingly aware of the problems of gambling, social scientists seemed completely ignorant of the issue. During the early 1980s, other than a handful of psychiatrists, psychologists, addiction treatment counselors, and recovering people, nobody else really did any research on the problems of pathological gambling. The same is true today. Even though pathological gambling affects as many lives as most of the other major mental illnesses, and even though it is almost as devastating as drug addiction and alcoholism, it remains a disorder without disciplinary or professional support, without funding, and without substantial research or theory. In light of the paucity of concern, adherents of the medical model had little difficulty establishing themselves as a dominant discursive force.

Second, and more importantly, we live in a society where social problems on the whole (e.g., crime, welfare, addiction) are defined as issues of health care (Foucault 1965, 1979; Turner 1987; Zola 1972). The United States is a hyper-individualistic, psychologically-oriented, medicalized society that fails to appreciate the larger and smaller social context in which most of its major problems emerge (Conrad & Schneider 1980). In fact, most social scientists wait until medicine defines something as a problem before they recognize it. Because we live in a highly medicalized society, the most likely discourse to fill the gaps left by the criminal justice system, religion, and the social sciences was the medical model. During the early 1980s no other discourse held the level of power it did.

Sheila Blume (1987), one of the leading clinicians and researchers in the field of gambling studies, explains:

The medical model encourages the development and financial support of resources to help pathological gamblers and their families, and to educate health care providers in identification, intervention, treatment and referral. . . . It also provides a framework for enlightened public policy in the regulation of the gambling industry, and for rational approaches to social and legal problems related to the disease. Gamblers Anonymous, a fellowship founded in 1957 on the same principles as Alcoholics Anonymous, has found the disease concept of compulsive gambling a helpful factor in recovery. (Gamblers Anonymous, 1984, p. 244)

As suggested by Blume, the main reason why the medical model became a dominant discourse on pathological gambling is because no other discourse—other than the legal—could provide the same level of social, cultural, personal, political or economic authority, position or power. Unless something better came along—with “better” defined not as an advancement in science but as an advancement in politics and cultural rhetoric—it would remain the model of choice. And why wouldn’t it? What other discourse today, besides the economic, has the potential to free someone from criminal sentencing, loosen cultural stigma, gain the backing of third-party insurance, and provide the basis for obtainable political change? Bottom line, “the ‘medical model’ is an approach designed to produce change” (Blume 1987, p. 239), and the “disease concept of pathological gambling like the disease concept of alcoholism provides a personally and socially useful approach” (Blume 1987, p. 243).

**The Challenges of Medicalization:
Is the Gambler Responsible or Not?**

While the medical model helped solve a number of problems left open by the legal system, it was not without its own set of difficulties. It challenged our society’s fundamental definitions of right and responsibility, punishment and rehabilitation. Before the publication of the DSM-III, there was

no controversy. Gambling was a crime. You punished the gambler, pure and simple. There was no need for rehabilitation. But after the DSM-III, it was all open for question. A new tension was born. Law professor, I. Nelson Rose (1988) summarized this tension as follows:

Law trails society. Changes occurring in the social order in America inevitably lead to conflicts and eventually to changes in the law. The changes that are taking place in contemporary society in the way we view gambling give us a unique opportunity to observe this slow and painful process at work.

The most dramatic confrontations between the old and the new are being fought out to determine basic notions of justice, punishment, and responsibility. There is no middle ground, no way to compromise, between the opposing views: in a criminal case the particular defendant is either acting out of free will and is therefore liable for his actions, or is ill and cannot be held responsible. Guilty or innocent. The standards of punishment follow: punish or rehabilitate. (P. 257)

Given the tension between the legal and the medical at the time of Torniero's trial—as well as throughout the 1980s and 1990s—a number of important questions emerged. Can pathological gambling really be both a disease and a crime? And, if so, are pathological gamblers responsible for their gambling debts? Are they guilty of their crimes? Are they accountable to their families, to their employers, to their friends? Can you send someone to jail for suffering from a disease? And what about government and big business? If government and big business are the primary dealers of the gambling drug, then aren't they responsible for addicting the United States population to gambling? And what are we to do then, send everyone to treatment? And what about the rest of society? Should we enact a prohibition on the majority just to protect a minority? Is gambling really bad for everyone, or is it a disease that only a small percentage suffer from?

The major players in the field of gambling took sides on these questions. On one side of the debate you had government, business, the gambling industry and the criminal justice system who argued that gamblers are rational, capitalistic creatures who—because they gamble with conscious control—are primarily responsible for their actions and their con-

sequences. On the other side of the debate, which was comprised of the field of gambling studies, Gamblers Anonymous, the gambling counsels and the field of addiction treatment, you had people arguing that pathological gamblers suffer from an illness, a disease of the mind, and therefore require compassion and treatment.

Of course, neither side completely ignored the other. Most of those who argued for punishment understood the need for treatment, and most of those who argued for treatment understood the need for punishment. Nevertheless, despite such a sophisticated awareness on the part of the majority of discursive actors involved in the making of pathological gambling, few stood in the middle politically, economically, theoretically or clinically. In fact, so important were the differences between these two perspectives that the history of pathological gambling and its medicalization since the 1980s can be defined by their quarrel. It is to this history, therefore, and the various reasons for it, that the rest of this study will be devoted.

Because Torniero's pre-trial hearing represents, both historically and metaphorically, the major arguments surrounding the organizing practice of pathological gambling and its medicalization, our movement through this study will follow the natural progress of the trial itself, with a twist. We start with an introduction to the court case (chapter two), followed by an analysis of the defense (chapters three through six) and then prosecution (chapters seven through nine) and then the important discursive actors in support of one side or the other (chapters ten through twelve). We end with the decision of the judge himself (chapter thirteen) deciding how the medical and the legal models should be resolved. The book closes with an epilogue which provides a rather exhaustive framework for the future of gambling research, treatment, education and policy.