

The American State Lottery: Sale or Swindle?

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Hope is a good breakfast, but a poor supper.

—Francis Bacon

Americans have made state lotteries a part of their civic lives. When New Hampshire introduced the first state lottery in 1964, no one could have predicted that today two-thirds of all Americans could take part in their state's lottery, participate in multi-state "powerball" games, or play a variety of scratch-off or video-display games modeled on keno, blackjack, and other casino or card games. As of 1999, 37 states, the District of Columbia, Puerto Rico and the Virgin Islands have inaugurated some form of state-supported gambling program. Each year, Americans spend over \$36 billion on gambling activities—nearly ten times more than is spent at the movie box office.

The popularity of gambling does not, however, lessen the unease many Americans feel about the role states play as sponsors of lotteries. Critics worry that states in some way cheat citizens. Yet they have a hard time identifying what is fraudulent about state sponsorship or promotion. In his classic work *Swindling and Selling*, legal theorist Arthur Leff points out a number of similarities between swindles and legitimate sales transactions. He nevertheless concludes that "a lottery is not a swindle if for a dollar ticket, it pays off nothing to 99,999 wagerers, so long as one gets the promised \$100,000." Those who support the notion of state lotteries often rely on an insight similar to Leff's: because lotteries do what they claim—make the promised payout (assuming a properly randomized drawing)—one has taken part in a sale, not a swindle. Critics of state-sponsored lotteries, by contrast, commonly follow up their intuition that lotteries are unfair by looking at how they are marketed. They do not claim lotteries are unfair because they are fixed (although this certainly has happened, most recently in Pennsylvania). Rather, critics believe that deceptive advertising is the source of fraud. For instance, advertising greatly exaggerates the happiness associated with winning, or encourages prospective players to disregard the vanishingly small odds of success.

Both opponents and proponents seem to have misunderstood the problem, however. One cannot conclude that lotteries are sales transactions simply because fair procedures of play lead to a winner. But one also cannot conclude that lotteries are swindles simply because advertising promotes play. I will argue that lotteries fail as legitimate sales transactions because the state fundamentally misrepresents their nature. States *falsely* claim that lotteries are prudent financial tools and that they promote worthy social causes such as education and care for the elderly. Although advertising often is the *conveyer* of these claims, I do not argue that the source of the swindle lies simply in the promotional aspects of lotteries. Instead, I suggest that if a lottery is claimed to be something that it is not, then one has been swindled, regardless of what one gets for one's money and regardless of whether the false claim is conveyed in a flashy television ad or a sober government report. Therefore, although there indeed may be a winner, all

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citizens are swindled by state lotteries. Furthermore, states exercise monopolistic power in legalizing lotteries. They also enjoy considerable moral authority, entrusted by citizens to act for the common good. States abuse their unique power and authority in order to effect their deception.

The first part of this essay explores the role of advertising in promoting lotteries. The second part evaluates the claim that lotteries are prudent financial management tools and that they promote worthy goals. The concluding section examines how states rely on their monopolistic power and moral authority to successfully promote lotteries.

The Power of States to Promote Lotteries

One cannot simply look to advertisements of lotteries in order to decide whether lotteries are sales transactions or swindles. It is true that state lottery offices run less as an arm of government and more like a business, with marketing departments which treat the promotion of its lottery products as an indispensable part of its work. Promotional opportunities abound: advertisements can be found on television, radio, in newspapers and magazines, on billboards and posters, and at venues of sale. In fact, America's inhabitants are exposed to lottery advertisements of one form or another more than any other type of message, including state-sponsored public service messages.

Critics of state lotteries look to the inaccuracies and inducements in advertisements to form the nexus of their claim that lotteries are swindles. They worry, for

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instance, that advertising encourages superstitious beliefs, since false causality commonly underlies such advertising appeals. New York's campaign: "You Can't Win if You Don't Play," Virginia's "You Never Know," and Maryland's "Play Today. Cash Tonight," are prominent examples. Television spots sponsored by Maryland feature a fairy, accoutered in Cinderella dress and star-topped wand. The advertisements suggest that lotteries can be foretold and that one might be chosen to win by a controlling entity, in this case a cheerful fairy. Further, critics point out that fantasy is also used to encourage individuals to dwell on what it is to be rich, lending legitimacy to the wish to escape the workaday world.

Although one might reasonably find suspect the variety of suggestive appeals used to promote lotteries, one cannot conclude from these elements that lotteries are swindles. Two points are worth keeping in mind. Similar appeals are made in many types of advertising, and one need not rush down the slippery slope to the conclusion that nearly all advertising promotes a swindle. Most importantly, the effectiveness of a product remains undiminished, even if its advertisements rely on emotional manipulation. For instance, television ads for the campaign, "Milk. It Does a Body Good," display plenty of washboard abdomens and bikini-clad hips. While it is true that much advertising methodically blurs the distinction of the product as a necessary but not sufficient condition for its outstanding effects, the products advertised are minimally effective. Milk is a healthful food, even if I cannot count on milk drinking alone to have *me* in a bikini by summer.

This point leads us to the camp of the lottery supporter, who concedes that lottery winners may not live charmed lives ever after. Regardless of the inducements to purchase tickets, however, there *is* at least one prizewinner—which is Leff's point precisely.

But is Leff's contention, that because lotteries produce winners they are sales transactions, any more sound than the view of lottery opponents, whose arguments relied on the power of marketing appeals? Just as one cannot conclude so quickly that state-sponsored lotteries are swindles based on grumblings about their advertising methods, one cannot conclude at this point that lotteries are sales either. Consider the case of a man who purchases a tie in order to match his new suit. If he buys a rayon tie that was hawked as "genuine silk," then he has been cheated, even though the tie can serve the intended purpose of accompanying his new suit. Because he has purchased something *other than* what he agreed to, he is swindled. Concerning state lotteries, I suggest that if people are encouraged to believe that they are buying one product when they are really buying another, then we must conclude that a swindle has indeed taken place.

Two False Claims Concerning the Benefits of Lotteries

The state-supported lottery offers a prudent personal investment strategy. To determine whether lotteries offer legitimate sales transactions or a swindle, one must examine what one actually is "buying." The introduction of the state-supported lottery commonly is justified by pointing to its role as promoting both worthy personal goals and socially beneficial economic goals. Lotteries are frequently compared with

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risky investments, no more perilous or unreasonable than making purchases in the stock market. The investment metaphor extends even farther: people are encouraged in their belief that the habit of buying lottery tickets is as routine—and prudential—as making bank deposits. In fact, the formats of some games encourage precisely this view. Market research shows that very small prizes, those of two to five dollars are usually "reinvested" immediately by individuals who buy more tickets with their winnings. How lotteries are packaged also reinforces an investment mentality. For instance, instant games commonly are bundled into perforated strips of three games,

encouraging an individual to think she is getting good value for her money ("three tickets for the price of one"). When lotteries mimic businesses, players are, to use social scientist Erving Goffman's term, "altercast" in the role of the prudent investor: the steady Friday "investor" in lotto, the dutiful and disciplined "re-investor" in the next scratch-off game using the winnings of this one.

Further, a variety of promotional advertising encourages citizens to believe that their participation in the state lottery is a prudent financial investment. Such promotion reinforces the human tendencies to overemphasize the likelihood of reward, to be overconfident

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about one's capacity for making educated guesses, and to deny the extent of randomness or serendipity in the world. These mistaken beliefs are necessary to accept the false claim that lotteries are prudent financial investments.

Oregon's campaign: "There's No Such Thing as a Losing Ticket," for instance, deflects individuals from the thought that in all likelihood they will lose the purchase price of their tickets. Instead, they are encouraged in their belief that play allows only for gain and therefore is risk free. (New York's "You Can't Win if You Don't Play" and Maryland's "Play Today. Cash Tonight" also encourage the belief that playing carries no risk of losing.) Some promotions encourage the consumer to believe that she is "closer" to winning because she has faithfully played the same number every day. Or, she might believe her chances of winning are higher because she buys her ticket at the same gas station that sold the last winning ticket. Other promotions encourage the consumer to believe that what appear to be chance events are actually under his control. For instance, recent promotions in New York depict a person who spies numbers in his bowl of noodle soup and in the curls of a fellow bus passenger's hair. These advertisements deflect viewers from considering the random nature of winning lottery numbers. Instead, they are encouraged to believe that winning simply requires observing one's surroundings and acting on one's "knowledge." Finally, even the amount of advertising one is exposed to increases confidence in the occurrence of unlikely events. For instance, student lottery players well acquainted with lottery advertising reported that they did not believe the games were fair and honest; they insisted, nonetheless, that they had a "good chance" of winning.

The state-supported lottery furthers worthy social goals. Lotteries are also presented as promoting worthy social goals. The Jamestown colony and the building of King's College (later Columbia University) are but two prominent examples of endeavors funded by lotteries. In the early days of the state-sponsored lottery, after 1964, it was claimed that lottery revenues would fund enrichment programs for education and for the elderly. Players are still encouraged to consider their participation as the good citizen's contribution to worthy "supplemental" social programs, viewing their gambling as "buying," "paying for," "contributing toward" commendable social goals. These appeals have been successful. Citizens purchase more lottery products than they pay in tuition and fees at their respective state colleges and universities, and they spend more on lotteries than on state liquor, utilities, and hospitals. Lottery revenues exceed even those obtained from taxation of tobacco products, alcoholic beverages, parimutuels, and from property taxes.

The claim that lotteries advance worthy social goals is problematic. Little earmarking actually takes place in revenue allocation. Most state lottery revenues are not earmarked at all and go straight into the general fund, or they are earmarked for such broad purposes as "economic development" or "tax relief." Even in that minority of cases in which revenues do not go into the general fund, it is still questionable whether lottery revenues were needed to fund the "supplemental" programs cited. Fully half of the states that adopted lotteries did so at a

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time when they had above-average rates of revenue increase from other sources. Finally, one can only speculate whether revenues for these programs were increased at all by the addition of lottery profits, or perhaps previous sources of revenue simply were eliminated.

Every state with a lottery is operating in effect as a legal monopoly, granting itself the sole right to provide lottery games within its borders. But actual revenues decrease over time. Administrative expenses rise as new games continually must be developed to maintain the public's interest in playing. Players also tend to funnel dollars from one lottery to another and from one state to another in search of larger jackpots. Since lottery tickets are not taxed, money used for lottery play is not spent on other consumer goods or taxable items. Consequently, by some accounts, states might forfeit nearly one-quarter of their lottery profits indirectly through impact on other sources of revenue.



"Those two are recent Powerball money. The people by the table are old state-lottery money."

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Lotteries are an inefficient means of promoting worthy social goals for other reasons. Charitable giving decreases with lottery play, and in lower income households the price of lottery tickets is offset by reductions in grocery and utility expenditures. Further, a minority of the citizenry buys the majority of tickets. A study of lottery play among income classes in Maryland found that adults in the under \$10,000 income group spent nearly three times more than those earning \$50,000 or more. (In fact, twenty percent of players account for sixty-five percent of the total amounts wagered, and ten percent of players account for half.)

Lotteries as Free-Ride Tax Relief

If state lotteries are poor mechanisms for personal financial management, if they provide little funding for worthy social programs, and if in fact they rely on low-income players for their revenues, then what can we conclude regarding the actual nature of such lotteries? In short, what is one "buying" with the state-supported lottery? In fact, lotteries exist not to fund enrichment programs but to avoid tax increases and

taxation altogether. Since state revenue sources tend to decline in proportion to the growth of lottery revenue, the survival of services increasingly depends on funds generated by lotteries. Through time, actual funding of even necessary programs decreases, and states must more aggressively advertise lotteries to offset a plateau in revenues and to avoid raising or instituting other forms of taxation. Jack Gordon, sponsor of a lottery bill in the Florida Senate in 1985, hints at this unpleasant reality: "There is no question in my mind that a personal income tax would be a more efficient way of getting money. The question is, who is going to pass it? Not me . . . every time we talk about a tax, people say try a lottery." Although lotteries fail as efficient personal or social financial management tools, they do succeed as an expedient political tool.

The free rider dilemma is most generally framed as a problem of a selfish—or even thoughtless—few partaking of a common good that requires voluntary contribution to preserve it. Even when lottery revenues support governmental programs, it is the lowest income groups that pay the largest percentage of their income to play and who receive the least benefit. For instance, the poor use services such as higher education to a lesser extent

than do the moderately well off. Citizens who seldom or never play, particularly if they are in the moderate- or upper-income groups, receive more value in services, gaining the most benefit of tax relief.

In all likelihood, most who refrain from play do not intend to free ride. Some nonplayers might simply believe that their actions—whether they play or not—are too inconsequential to effect any larger group. Others might be following the logic of the “sucker effect;” they fear others will benefit more from their lottery play than they themselves can hope to gain. Still other nonplayers might believe that their enjoyment of goods and services funded by lottery play is deserved because their contributions to society takes other forms. While I certainly would not require every citizen to be knowledgeable about the fiscal realities that underlie state sponsorship of lotteries, the *awareness* of free riding is less important than its existence. More disturbing is that states themselves frame and shape the beliefs of the free rider by allowing her to believe lottery revenue to some extent increases the funding of social needs and worthy goals, but in any case these needs and goals are funded by state revenues. Most worrisome, finally, is that state-supported lotteries permit abrogation of one’s responsibility to contribute to the common good. Seen in this light, state-supported lotteries erode citizenship in two ways: the non-player enjoys goods and services for which she has made little or no contribution. More importantly, she may begin to think of her contributions to the wider community as optional and, in fact, acts of supererogation.

States claim falsely that lotteries are prudent investment tools and that they achieve worthy social goals. Instead, they offer free-rider tax relief. It seems, therefore, that lotteries are not the “painless tax” one might initially believe them to be. The lottery tax system extracts what little money the poor do possess and, through ever-decreasing direct taxation, also allows the social sphere to abrogate its responsibility for providing basic services. Leff’s conclusion that lotteries are simply a means of producing one winner, among an indefinite number of losers, must be abandoned.

States Exercise Monopolistic Power and Abuse Their Moral Authority

States with lotteries operate as legal monopolies, granting themselves the sole right to provide lottery games within their borders. To maintain interest in play, states find they must continually create new games and produce new advertisements for existing games. While these efforts are costly, there is yet another cost to monopoly power—a moral cost. States repeatedly assail citizens with advertisements that present false claims. States also deliberately encourage citizens to draw mistaken or unrealistic judgments about lotteries.

Some might argue that, on balance, state lotteries are harmless pastimes, but if a person cannot afford to participate in them, then he or she should make the judgement to refrain from play. Others have accepted lotteries as a reality of American life and look to ways of minimizing the social costs of lotteries. Political philosophers William Galston and David Wasserman, for instance, argue for a strategy of “containment.” Among other proposals, they suggest a moratorium on the introduction of new lottery games, and the elimination of non-informational advertising as practical ways to minimize harm. Such approaches to lotteries are reasonable, since it would be naïve, if not paternalistic, to suggest that people could be made to consistently act in their own best interest, or that they would cease gambling if only states abandoned lotteries.

Nonetheless, I find it improper for a sovereign authority to create a device dependent on deceit and more improper still to conclude that those who are harmed have acted freely to their own detriment and therefore bear the moral responsibility for those harms. Nearly four centuries ago the political philosopher Thomas Hobbes discouraged a civic life that relies on a duplicitous relationship between state and citizen. Although “force and fraud are in [the state of nature] the two cardinal virtues,” the state is created for the good of the people. Furthermore, he argues, the state has a responsibility to act in a “perspicuous” way for the good of the citizenry.

Perhaps you have tossed coins in the cup of a man dressed in monks’ robes, believing your donation would benefit the monk’s order or support its good works. None of this may be true, and you might come to find out that the man merely poses as a monk, and that he squanders all the money he receives. Pretending to be a cleric is an added injury, since effective impersonation violates trust and diminishes the good reputation of the genuine article. Similarly, states with lotteries doubly harm their citizens: not only are lottery proceeds not used for the purposes claimed, but states with lotteries also abuse their trust as agents for the common good.

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