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## ABSTRACT

I argue that in purely professional games of pure chance, such as slot machines, roulette, baccarat or pachinko, any instance of cheating that successfully deceives the judge can be 'part of the game'. I examine, and reject, various proposals for the 'ethos' that determines how we ought to interpret the formal rules of games of pure chance, such as being a test of skill, a matter of entertainment, a display of aesthetic beauty, an opportunity for hedonistic pleasure, and a fraternal activity. Ultimately, I argue that 'winning the benefit' is the only ethos that can apply in *purely professional* games of pure chance, and that if we interpret the formal rules according to this ethos, cheating that is undertaken with respect for the judge's authority, but that attempts to cause the judge of the game to 'voluntarily' relinquish the benefit of the game by deceiving them into thinking that the formal rules of the game have been followed, is impermissible *but acceptable* cheating, and is therefore within, rather than outside, the game. Here, I define 'games of pure chance' as games in which chance is the *only* determinant of winning.

## KEYWORDS

Gambling; cheating; games of chance; lusory attitude

## Introduction

Drawing on literature in the philosophy of sport, this paper argues that in purely professional games of pure chance, such as slot machines, roulette, baccarat or pachinko, all cheating that successfully deceives the judge is 'part of the game'. After outlining the idea of rule breaking that is internal and external to a game through a discussion of Suits' formalism and constitutive and regulative rules, I examine, and reject, various proposals for the 'ethos' that determines how we ought to interpret the formal rules of games of pure chance, such as being a test of skill, a matter of entertainment, a display of aesthetic beauty, an opportunity for hedonistic pleasure, and a fraternal activity.

Ultimately, I argue that 'winning the benefit' is the only ethos that can apply in *purely professional* games of pure chance, and that if we interpret the formal rules according to this ethos, any cheating that is undertaken with respect for the judge's ultimate authority to determine whether the formal rules have been followed, but that attempts to cause the judge of the game to voluntarily relinquish the benefit of the game by deceiving them into thinking that the formal rules of the game have been followed, is impermissible *but acceptable* cheating, and is therefore within, rather than outside, the game. To put things

another way, such cases involve the formal rules being broken, but are nevertheless 'acceptable', in the sense that they count as game behaviour.

Here, I define 'games of pure chance' as games in which chance is the *only* determinant of winning. For example, while I am sure there are plenty of guides claiming to teach how to win at slot machines or roulette, a clear-headed understanding of these games tells us that winning or losing is not a matter of skill or knowledge. While all games of skill involve some degree of chance, however minor, here I am interested *only* in those games that are *entirely* a matter of chance. Whether or not this understanding of cheating can be applied to games that are *predominantly* a matter of chance, though involve *some* skill, is another matter. However, this analysis does *not* apply to games in which ethoi such as testing skills, entertaining an audience, displaying aesthetic beauty, or fraternal bonds play a significant role. In such cases, far fewer instances of rule breaking will count as 'part of the game,' though where this line is drawn will depend on the purpose—or balance of purposes—of each game in particular.

'Purely professional' should be understood here to refer to games that are entered into with the primary motivation being to receive the prize that accrues to the winner of the game. This may or may not be commonplace; it is likely, I think, that most gamblers play for the enjoyment rather than solely for the prize. However, it is fair to assume that *some* players engage in games of chance with the prize as their main aim.

## Rule Breaking and Formalism

The natural place to start a discussion about rule-breaking in games is with Bernard Suits' Logical Incompatibility Thesis (2005). According to this thesis, it is simply impossible for cheaters to win, since all cheating is 'outside the game'. As A.J. Kreider puts it, 'cheaters cannot win, because winning a game requires playing of the game, and, since cheaters intentionally violate the rules of the game in question, they are not genuine participants' (2011, 55). In other words, if we are interested in, say, winning at a game of roulette, then in order to do so we need to actually *play* roulette. Since roulette is a game with a specific set of rules that constitute it *as* that game, and if (for instance) using magnets to influence the outcome of the game breaks those rules, then we cannot claim that we have *won roulette*. Winning is only possible inside the context of a particular game, and since breaking the rules means that we are no longer playing that game, it becomes impossible to 'win' it under such circumstances. Observing the formal rules of roulette is required for the game of roulette to be possible in the first place (Ciomaga 2013, 36).

Suits' view, and others like it, are described as 'formalist' accounts of games. Games are defined exclusively according to their formal rules. What makes roulette 'roulette', for instance (as opposed to just an amusing activity of watching a ball spin around on a wheel), is that it has a certain set of formal rules that constitute it. As William Morgan puts it,

What it means to engage in a game, to count as a legitimate instance of a game, to qualify as a bona fide action of a game, and to win a game is to act in accordance with the appropriate rules of the game. All instances and actions that fall outside the rules of the game, therefore, do not count as legitimate instances or actions of a game (1995, 50).

One problem with the formalist account of games, however, is that it has difficulty accounting for the fact that people *do* break the rules of games, without us assuming that the game has thereby ceased. For instance, players in many sports commit ‘strategic fouls’, i.e. they break the rules in such a way as to gain an advantage (even if they are subsequently punished). A soccer player, for instance, may foul an attacking player who is outside the goal box but who has a clear shot at goal, reasoning that even though this is an illegal move, the penalty (a free kick) is preferable to allowing the play to continue, since a goal would otherwise be almost certain.

While the morality of strategic fouls is hotly contested, the point is that it does not seem at all obvious that *all* rule-breaking automatically invalidates the game. When the soccer player fouls the attacker, the game does not end, the score annulled. Rather, the game continues *despite* the rule breaking. What is more, this is seen by many (though perhaps not all) spectators as simply part of the game itself. So, for instance, when a strategic foul occurs, few watching the game would hold that the players and the referee, by continuing to play/officiate the game, have made some grave error. No one typically judges the players and referee for foolishly running around, pretending to play a game that has long ceased. Instead, strategic fouls are taken within the stride of the match and the fact that the game continues beyond them is obvious and natural. If so, then it cannot be that rule breaking is *always* incompatible with playing a game.

### Constitutive and Regulative Rules

The formalist, at this point, can reply to this objection by drawing on the distinction between constitutive and regulative rules. As Kreider puts it, ‘regulative rule violations involve the invocation of penalties, whereas constitutive rule violations indicate that the game is not being played at all’ (2011, 56). Just so long as the rule being broken is a *regulative* rule, then, the game can continue. If, by contrast, the rule being broken is a *constitutive* rule, then we run into the Logical Incompatibility Thesis, where we have ceased to play the game at all. Presumably, fouling an attacking player in soccer is therefore a regulative rule, and is therefore consistent with the game of soccer.

The problem we are faced with here, however, is that it is not clear how to draw the line between constitute rules and regulative rules, either in sports such as soccer or, more relevantly, in games of pure chance such as slots or roulette. Do games of pure chance contain regulative *and* constitutive rules, or are there only constitutive rules? If they contain both, what is a constitutive rule of, say, roulette, and what is a regulative rule? And why are some rules in one category and some in the other?

At first glance, it would *seem* as if *all* rules in roulette are constitutive rules. Unlike sports, it is not easy to think of any kind of ‘permissible’ cheating. After all, any kind of cheating in roulette, if caught, is likely to have the player removed, and probably banned, from the casino (and maybe even prosecuted). If *any* rule-breaking causes the game to cease, then this at least *suggests* that all rules are constitutive rules.

We might also argue here that rule breaking in games of chance such as roulette—and let us take the use of magnets here as an example—are importantly different from strategic fouls, in that strategic fouls are to gain a subsequent advantage. Cheating at roulette, by contrast, is mere risk-taking. To put things another way, if we foul someone in soccer, the idea is typically that *even with* the penalty, we will be better off. It is a calculation of cost

and benefit, in which the rule breaking *now* puts the player or the team in a better subsequent position. This is not true of using magnets in roulette, however, since the penalty (being ejected from the casino) does not lead to any subsequent benefit.

However, I argue that this is a mistaken way of distinguishing between regulative and constitutive rules. After all, some strategic fouls involve much the same kind of calculation as does cheating at roulette. For instance, it may be that fouling the attacking player in soccer is only beneficial if the foul goes undetected. If the referee catches the foul, the fouling team will be in a worse position than had they not fouled at all. In such a case, it is not a *subsequent* benefit that motivates the foul, but rather a willingness to take a risk that may or may not pay off. Yet, since the game of soccer survives such calculated fouls, it is not obvious that the lack of subsequent benefit means that such fouls are breaking constitutive rather than regulative rules. Similarly, then, the fact that using magnets at roulette is a risk that, should it fail, does not have any subsequent benefits, should not be seen as an indication that this is breaking a constitutive rather than regulative rule.

## The Ethos of Games

The difficulty with the constitutive/regulative distinction is that while there seem to be some obvious cases where a rule is of one kind or the other, there are many cases that are less clear-cut. This is perhaps because the *criterion* for being constitutive or regulative is hard to discern. After all, the fact that a rule is such that the game would or would not cease to be played should it be broken is *not* a criterion of these categories but is itself the thing that is in need of explanation. In other words, the question of *why* a rule is one kind or the other is what we need to understand, especially if we are going to apply this distinction to rule-breaking in games of pure chance. How can we determine whether, for instance, the use of magnets, wheel gaffing, and computers in roulette; card cutting, past posting and pinching in baccarat; or computer chip replacement and the like in slots, is merely 'part of the game', if we have no understanding of what determines whether a rule is constitutive or regulative to begin with (aside from our case-by-case intuitions)?

When it comes to the question of what makes a rule constitutive or regulative, nonformalist approaches to games have an advantage over formalist accounts. Nonformalist accounts take the rules of a game to be only *part* of what makes a game *that* game. In addition to the formal rules, we might have an 'ethos'—'a socially-determined interpretation' (Kreider 2011, 55) of the rules that allows us to interpret and apply the rules in practice (D'Agostino 1981). In different contexts, then, the rules may be interpreted differently in order to 'promote certain interests' (Kreider 2011, 55). For instance, in a casual game of soccer, what constitutes a foul is likely to be different than in a professional game.

But what interests are the relevant ones when it comes to determining how we ought to interpret rules? J.S. Russell argues that we ought to recognize that *sports* games are tests of athletic excellence. As such, 'the rules should be interpreted so as to maintain and foster those excellences' (Russell 2014, 319). For Russell, then,

Behavior that undermines or poses substantial threats to the opportunity to exercise those excellences or have competitions determined by those excellences should be highly suspect morally and be the subject of critical moral scrutiny (Russell 2014, 319).

We might say, then, that we can determine which instances of rule breaking are regulative and which are constitutive by considering whether they undermine the excellences that are the purpose of the game. So, as Warren P. Fraleigh argues, ‘inherent in the structure of sport qua sport is the contesting and pursuit of excellence in *rule-defined skills*, and . . . this is the basis for us to ascertain acceptable actions’ (2003, 170). Hence, ‘rules should be interpreted in such a manner that the excellences embodied in achieving the lusory goal of the game are not undermined but maintained and fostered’ (Russell 1999, 35). As a consequence, we might say that certain intentional rule violations are ‘part of the game’—if they promote the constitutive skills of that game—while others are not, since they negate those skills.

This way of approaching rule breaking also allows us to distinguish between behaviour that is permissible, i.e. that follows the formal rules; behaviour that is impermissible but acceptable, i.e. that breaks the formal rules, but advances the activity as a test of athletic excellence; and behaviour that is impermissible, i.e. that breaks the formal rules but does not advance the activity as a test of athletic excellence. The first two categories involve game-behaviour, e.g. that are actions that are ‘part of the game’, whereas the latter is *not* game-behaviour, e.g. it is *outside* the game (D’Agostino 1995, 47).

The problem with applying the idea of an ethos—or at least *this* ethos—to games of pure chance, however, is that such games do not seem to involve excellences. Certainly, *some* casino games involve excellences of one kind or another: poker is considered a game of intellectual skill, and even though card counting is frowned upon by casinos, it seems reasonable to consider applying this strategy to blackjack as displaying a certain kind of excellence. But games of *pure* chance—such as slot machines, baccarat, pachinko or roulette—apparently do not involve any kind of excellence whatever. If so, then interpreting rule breaking in terms of an ‘excellence’ ethos is not useful for assessing whether any particular instance of cheating in games of pure chance consists in constitutive or regulative rule breaking. It does not help us to distinguish between rule breaking that is impermissible but acceptable, and rule breaking that is impermissible but unacceptable. Therefore, since games of pure chance do not have constitutive skills in the first place, we should look elsewhere for the resources that allow us to interpret the rules of such games.

## Entertainment Value

Of course, ‘excellence’ may not be the only ethos—the only *purpose*—of a game. Many games are intended to be entertaining to spectators. Being entertaining often goes hand in hand with the display of athletic excellence, but these things can come apart. For instance, the ‘let ‘em play’ refereeing philosophy in games like American football and ice hockey, where infractions are ignored for the purpose of allowing the game to continue uninterrupted, is a good example of where ‘being entertaining’ seems to influence how rules are interpreted and when they are applied (Wyshynski 2019). Part of the justification for ‘let ‘em play’ is, of course, that allowing the game to continue gives the players the opportunity to display the constitutive skills of the sport more fully. However, the fact that ‘let ‘em play’ tends to be more dominant during playoff games than regular season matches suggests that making the competition entertaining to spectators is at least some part of the picture (since one major difference between regular season and playoff

games is the size of the audience). As Hugh Upton points out, it is reasonable to suppose that many people might 'find games such as football more competitive and more exciting with an element of cheating, rather than with none at all' (2011, 173). Oliver Leaman makes a similar point: as Russell describes Leaman's view, 'cheating, gamesmanship, incompetent umpiring, and some types of vigilante justice should be recognized as part of games in some circumstances for what they add in the way of theatre, drama, and challenge' (Russell 2014, 319–320).

While this is an approach that is plausible in the context of sports, as well as casino games with a skill dimension, such as poker, it is difficult to see how to apply it in the case of games of pure chance. Generally speaking, games of pure chance are not a 'spectator sport'. There *will* be occasions, no doubt, where this is not true. We might imagine scenarios, often seen on TV or in film, where a roulette player wins increasingly large amounts of money and draws a crowd. But a) this is certainly not the central aim of games of pure chance—situations where such games draw spectators are the exception rather than the rule. In addition, however, b) such situations may actually *recommend* rule breaking. We might imagine, for instance, a roulette player winning a number of spins, increasing their chips, and placing them all on a final, risky bet. In such a circumstance, winning that final spin and beating the house seems to be a perfect example of 'theatre' and 'drama'. Certainly, winning a jackpot at a slot machine is more dramatic than losing, and of more interest to those nearby. Hence, so long as the player cheats in an undetectable way, does it matter, in terms of entertainment value, whether they won fairly or not (particularly in contexts where skill is not a factor)? Where we *can* apply 'entertainment' as an ethos for distinguishing between acceptable and unacceptable instances of cheating at games of pure chance (and these occasions are rare), then, it seems that cheating might be 'part of the game.' After all, if the game's purpose is entertainment, at least *some* cheating seems to further this purpose. Other kinds of actions, such as robbing the croupier, clearly do not; but arguably the use of magnets or wheel gaffing in roulette, performed judiciously, or the exploitation of software glitches in slot machines, *do* contribute to the game being more entertaining for spectators, and therefore (if entertainment is the—or a—purpose of the game) should be considered as 'part of the game', or at least inform how we interpret when and how the formal rules ought to be applied.

## Hedonism

A hedonistic justification—the player's (as opposed to the audience's) pleasure—is a more promising ethos for games of pure chance, since much—maybe most—gambling is done for pleasure. The problems with a 'hedonistic' ethos, however, are two-fold: first, it is an ethos that each player *imposes* on the game, in their particular case, rather than being a generally agreed on ethos that governs how we ought to think about games of pure chance generally. *Some* players will play the game for the pleasure of the game, and there is nothing wrong with doing so. Some players, however, will play in order to try to win the benefit—the prize—of the game, and this is not obviously a mistaken reason to play. Casinos cannot just *assume* that everyone playing is doing so for hedonistic reasons; they have no grounds to criticise anyone who is *not* playing merely for their own pleasure, and we therefore cannot be justified in interpreting such games in light of a hedonistic ethos in a blanket way.

To put it another way, we might think of the player's pleasure as more in the nature of a hypothetical rather than categorical imperative: I may choose to play the game 'straight' due to the fact that this makes the activity more enjoyable, but unless 'enjoyment' is my goal, this consideration does not apply. Furthermore, if cheating does reduce the enjoyment of the game, then cheating is instrumentally foolish, but it is not obvious that doing so invalidates the game, rather than simply being an action that works against my own (hedonistic) interests. In other words, *if* I am playing a game of pure chance due at least in part to the thrill of the game itself, then it would be self-defeating to cheat, since that removes or dulls that thrill.

It is quite likely, of course, that the overwhelming majority of players *do* play for the thrill, rather than for the prize alone. After all, *most* players do not cheat; yet few players are unaware of the house advantage, meaning that most realise that the odds of winning—especially in the longer term—are against them. But they play anyway. Hence, it is probably fair to assume that *purely professional* players of casino games are in the minority. Does this mean, though, that purely professional players are not legitimate participants in the game?

One thing that can be said here is that it is quite likely that *if* a player declared their motivations as being purely professional—for instance, if they announced that they were only engaging in the game to pay their rent—the other players are likely to judge them for this. Not only that, other players are likely to hold the view that, for that person, the activity had ceased to be a *game* at all. After all, if the player does not play the game for the sake of enjoyment, can they really be said to be *playing*?

While there is something to be said for the important role of pleasure in game-playing, this argument, I suggest, relies on an equivocation on the meaning of the term 'game'. On the one hand, 'game' can be taken (very loosely) to be a rule-governed activity entered into for the sake of pleasure. This understanding of the term builds the pursuit of pleasure in from the start and is likely closer to our everyday usage of the word. After all, most activities that we refer to as 'games' are activities that we enter into with pleasure as the main goal. We often explicitly contrast *serious* activities that are intended to advance us in some way in the world with *fun* 'games' that have no purpose outside of enjoyment. According to this definition, purely professional players of games are not really *players* after all.

However, this above definition is not how games are understood in the philosophy of sport and games. For instance, Suits' formalism understands games (again, extremely broadly) as attempting to achieve a prelusory goal using only lusory means, i.e. using only means accepted by the constitutive rules of the game. Such a definition does not presuppose what the prelusory goal is; it does not *require* that players *enjoy* the game for the game to count *as* a game.

The criticism that purely professional players are not *really* playing a game gains its plausibility by equivocating between these two meanings. That is, it adopts the first meaning to exclude the purely professional player from game playing (but only in a very limited sense) while concluding that they are not therefore game playing in the much more expansive sense typically used in the philosophy of sport and games.

We can see this in the following example: we can imagine a basketball who plays the sport primarily to pay the bills, but who does not particularly enjoy the activity of basketball. We would perhaps find such a person psychologically puzzling, and wonder



why they have decided to spend their life playing *basketball* specifically if they do not actually enjoy it (though for some the average salary of NBA players means that this is a question that answers itself). Nevertheless, it would be strange to accuse such a player of *not actually playing basketball* when we see them on the court during matches. Or, rather, if we were to say such a thing, it would be more in the nature of impugning his motives in playing, rather than suggesting that he is not playing the game of basketball in the philosophical sense. In other words, we need to distinguish between the 'play' aspect of game-playing from the 'game' aspect. Since it does not do this, the criticism that purely professional players are not *really* playing the game since they are not motivated by pleasure is somewhat question begging.

Furthermore, if players are required to play for the sake of enjoyment for something to count as a game, then very little casino gambling should *ever* be considered a game. After all, dealers are *also* game participants, and at least much of the time they are not participating for the fun of it, but for a salary. In a city like Macau, for instance, where casinos are the main industry, becoming a croupier is not a career choice for those driven to the life by a deep passion, but is just another job. Furthermore, casinos themselves exist to make a profit; they are not created as public goods. If the participants on the casino side are able to play for the sake of profit without undermining casino games' status *as* games, why should a player adopting this same attitude on the other side cause the game to cease?

Secondly, and relatedly, it is not necessarily the case that cheating *does* reduce the player's pleasure. In fact, for many, the risk of being caught cheating, and the application of the skills involved in getting away with it, is likely to be far more enjoyable for some than playing the game 'straight'. Hence, in some cases a hedonistic ethos may be a positive argument in favour of interpreting infractions of the formal rules as 'impermissible but acceptable,' since it increases the enjoyment of the game for the participants.

## Other Ethoi

Games may exist for other reasons than to test skills, for pleasure, or to entertain an audience. Here I will briefly discuss two other candidates for the 'ethos' of games of pure chance—*aesthetic beauty* and *fraternity*—and argue that they either do not apply easily to games of pure chance, or do not rule out many forms of cheating.

Aesthetic beauty is fairly straightforward when it comes to games of pure chance: it does not obviously apply. Aesthetic beauty as a consideration is most relevant in games such as ice skating, gymnastics, or synchronised swimming, and perhaps is part of the motivation behind 'let 'em play'. It is typically not the *only* consideration, and it is often difficult to disentangle from a 'skill' ethos in practice, but it does seem to be a factor, weighed against other factors, when interpreting the rules of a game. However, it is hard to see what aesthetic dimension there might be in games like roulette, slots, pachinko, or baccarat. This is not to say that there *could* not be an aesthetic dimension to games of chance in principle, simply that mostly there does not seem to be.

Furthermore, it is difficult to identify an aesthetic dimension that can be either enhanced or degraded by cheating. Would using counterfeit chips reduce the aesthetic dimension of roulette? Is the aesthetic pleasure of baccarat degraded by card swapping? Generally speaking, I think it is fair to say 'no'. This does not rule out that there could be

forms of cheating that could increase or decrease the aesthetic beauty of a game of pure chance in principle. However, generally this does not seem to be the case. Hence, aesthetics is not a helpful way of distinguishing those kinds of cheating in games of chance that are ‘part of the game’ and those that are not.

The ethos of fraternity is also difficult to apply generally. There are likely to be some instances of games of pure chance where fraternity—the bonds between players—is an important concern. If friends were to play a game of dice, for instance, in many cases breaking *any* of the formal rules would be considered to have invalidated the game, since the *purpose* of the game is to strengthen bonds of friendship by participating in an activity with shared rules. A cheater in such a game would be rightly criticised and would usually be seen to have done something impermissible and *unacceptable*. However, casino gambling does not typically involve fraternal bonds. There is usually no relationship between the croupier and the players, or between one player and another. Hence, there is no justification for interpreting the rules in light of fraternity in at least most cases. In other words, certain instances of cheating that *would* be considered ‘outside the game’ when played between friends, should arguably *not* be understood as such when played between strangers in a casino.

Of course, this absolutely does not rule out the possibility that casino gambling can involve fraternal bonds. When it does, the game ceases to be purely professional and certain forms of cheating will therefore be ruled out, based on whether it supports or undermines such bonds. The point here, rather, is that fraternity is not a *necessary feature* of casino gambling. Hence, there are cases that involve fraternity and cases that do not. My interest here is in cases that do not and so I want to put the former cases aside for the sake of furthering the discussion of purely professional games.

### Purely Professional Games

How should we understand games of pure chance, then, when skill, entertainment value, aesthetic view, player hedonism, or fraternity are not ethoi that can help us to determine which rule breaking is within or outside the game? I suggest we should consider games of pure chance played in such contexts as *purely professional games*. Purely professional games are those in which ‘players do not enjoy playing, but they do [so] as just another job’ (Ciomaga 2013, 28). The goal of purely professional games, then, is to gain the benefits that accrue to the winner of that game. Or, to put it another way, to gain those benefits *by* winning the game. Here, ‘winning’ the game involves playing in such a way as to receive the benefits of the game ‘voluntarily,’ though this may include by deceiving the other players and the judge. In other words, in purely professional games, ‘respect for sport rules just another way of achieving certain benefits’ (Ciomaga 2013, 28).

Of course, *most* games we play are not purely professional games. Even professional sports should typically not be thought of as purely professional games, since the aim of ‘winning the benefit’ is at least balanced by concerned with skills, entertainment and aesthetic considerations. In games of pure chance, however, played between strangers, these other considerations may not be present. Hence, *winning the benefit* is the overriding ethos by which we ought to evaluate whether an instance of rule breaking is internal or external to a game.

It is important, however, to emphasise that ‘winning’ the benefit is still a part of the picture. Not *all* activities that ‘gain’ players the benefit count as ‘winning’ it. Those activities that do not count as ‘winning’ the benefit are those that are external to the game. Those that do, are part of the game. The distinction is made as follows: ‘winning’ requires playing the game to the extent that the judge of the game has taken the rules to be complied with, and therefore *voluntarily* relinquishes the benefit<sup>1</sup> *and* that the player undertakes the cheating activity with respect for the final authority of the judge’s decision.

In other words, ‘deception’ plays a key role in this picture. Rule breaking undertaken with a lusory attitude that deceives the judge into thinking that the formal rules have been followed are successful deceptions *internal* to the game. Rule breaking undertaken with a lusory attitude that fails to deceive the judge into thinking that the formal rules have been followed are *unsuccessful* deceptions internal to the game. But attempts to gain the benefit of the game that do not involve attempting to deceive the judge as to whether the formal rules have been followed, such as robbing the casino, or threatening the croupier, and which are therefore clearly undertaken without respect for the judge’s authority over whether or not the formal rules have been followed, are external to the game.

This may seem like an extreme position, but it is not one inconsistent with the way that at least some games are interpreted. For instance, Hugh Upton discusses an attitude towards professional sports that amounts to ‘they cheated, but they got away with it, so good luck to them’ (2011, 169). Sports commentary often includes comments such as the following, here on the topic of England cheating in international rugby matches:

until the International Rugby Board instructs officials to police these areas properly, England would be foolish not to pay as much attention to gamesmanship as they do to other parts of their repertoire (Ackford 2010).

In other words, exploiting the insufficiencies of the referees is often not just *permissible* in professional sports, but is actively encouraged. As Upton puts it, ‘being “streetwise” is praised, and players are expected by many to transgress and to do so with sufficient cunning to avoid being penalised’ (2011, 170). In short, ‘it is simply part of a player’s job to seek advantage by cheating and solely a matter for the officials to restrict the success of this policy’ (2011, 170). Successful deception is within the rules. Deception is only a contravention of the rules if it is caught, and even being caught transgressing the rules is simply ‘part of the game’: it is impermissible but acceptable.

This attitude may or may not be defensible when it comes to professional sports. However, ‘winning the benefit’ is—or should be—only a minor part of the ethos of a professional sports game. Professional sports may be *professional*, but they are not *purely* professional: the display of skills, entertainment values, aesthetic beauty, and in some cases fraternity play a role in how rules should be interpreted, and these considerations place distinct limits on when we might consider cheating simply ‘part of the game.’

### Strategic vs. Definitional Deception

It is useful to think about purely professional games of pure chance in light of Pearson’s distinction between strategic deception and definitional deception (which in many ways parallels the regulative/constitutive distinction). For Pearson, strategic deception is a *skill*

that ‘separates the highly skilled [player] from the less skilled [player], and therefore, is a sort of activity that makes a significant contribution to the purpose of the [game]’ (1973, 116). By making the opponent think that they will do one thing, while doing another, the player can significantly add to the thrill of the game (Pfleeger and Roesenberg 2014, 218). However, what marks *strategic* deception is that it ‘is in no way designed to deliberately interfere with the purpose of [the game]’ (Pearson 1988, 116).

Definitional deception, by contrast, is when one has ‘contracted to participate in one sort of activity, and then deliberately engages in another sort of activity’ (Pearson 1988, 264). Here, for instance, we might think of rugby as an activity that exists to test certain skills of the players and teams. If the players contract with each other to engage in this activity, deception that undermines the sport as a test of constitutive skills is definitional deception. Similarly, we might understand our shared activity to be one that is predominantly about entertaining an audience, or displaying aesthetic beauty, or some combination of these goals (and, in fact, I expect that a lot of disagreement about whether an instance of rule breaking is acceptable or not is disagreement about the relative weights of these concerns in terms of the overall purpose of the game). To the extent that the deception undermines these agreed-upon goals, it is definitional, since it involves performing actions outside of what we have agreed constitute the overall purpose of the game.

Note what is being said here, however: *because* the overriding goal of the game is to test the players against each other in terms of the particular skills of that game, or to entertain, or to display aesthetic beauty, then the line between strategic and definitional deception is drawn in a particular place. If the goal of the game is different, then the distinction between strategic and definitional deception will be different as well. So, for instance, actions that will be considered definitional deception if the ethos of the game is skill-focused, may be a strategic deception if being entertaining is the dominant aim of the game.

Since the games of pure chance we are considering are *purely professional*, however—since the agreed-upon purpose of the activity is *winning the benefit* (a purpose that the casino surely agrees to as well, since it exists as a profit-making enterprise above all else)—then *all* deception is strategic rather than definitional. If we have one extreme, where the purpose of the activity is nothing more than following the rules, and where *every* instance of deception is therefore definitional—and therefore outside the game—games of pure chance offer the other extreme, where *every* instance of deception is strategic—and therefore in principle ‘part of the game.’ Most games, including professional sports, lie somewhere in the middle. But in purely professional games of pure chance, since ‘winning the benefit’ is what the activity is all about, there *can be* no deceptions that are *necessarily* ‘definitional’. Hence, *any* instance of deception in purely professional games of pure chance can, depending on the attitude of the player, be ‘impermissible but acceptable.’

### The Lusory Attitude

Here we might want to ask once again whether purely professional game of pure chances, understood as I have outlined it here, should even be considered a game at all. After all, Bernard Suits points out that,

To play a game is to attempt to achieve a specific state of affairs [prelusory goal], using only means permitted by rules [lusory means], where the rules prohibit use of more efficient in favour of less efficient means [constitutive rules], and where the rules are accepted just because they make possible such activity [lusory attitude] (2005, 54–55).

In other words, while here we have a prelusory goal (winning the benefit), those who cheat at games of pure chance seem to be abandoning the idea of ‘lusory means’ and therefore make impossible a ‘lusory attitude’. This seems to be a problem. As Adam G. Pfleegot and Danny Roesenberg put it,

if athletes and gamers do not adopt the lusory attitude, the peculiar logic of sports and games as non-utilitarian, means-ends activities would make little sense. Put another way, why would someone choose to overcome unnecessary obstacles using less than efficient means? For example, trying to put a small ball in a cup from hundreds of yards away by striking it with an oddly shaped club and utilizing the fewest number of hits rather than placing the ball in the cup with your hand is absurd unless one is playing golf (2014, 217).

If anything goes in purely professional games of pure chance, where do the lusory means come into the picture? Where are the restrictions that make it a *game*, rather than simply an ordinary, everyday, instrumental activity?

Of course, I have already suggested that *not* every action is permitted in purely professional games of pure chance. *Only* those actions that are intended to *deceive* the judges are permitted. Actions that attempt to gain the benefit through non-deceptive means, such as robbing the casino (or even just getting a job and earning the prize money doing something unrelated), do not constitute ‘playing the game.’ Hence, even if we allow that *all* instances of deceptive cheating in purely professional games of pure chance can be impermissible *but acceptable*, this does not mean that *any action whatever* is part of the game, even if the action is a more efficient means of gaining the benefit. This is where the difference comes in between ‘winning’ the benefit, i.e. restricting one’s action to the formal rules of the game plus those actions that attempt to deceive the judge into thinking that the formal rules of the game have been adhered to; and ‘gaining’ the benefit, i.e. performing any action that leads us to the person taking possession of the benefit. The former involves lusory means and a lusory attitude, while the latter does not. Hence, the former is ‘part of the game’, whereas the latter is not.

However, as stated this response is not enough. The fact that the judge is deceived into thinking that the rules have been adhered to does not mean, on its own, that the deceptive activity was truly part of the game. Surely it is possible for the judge to be mistaken: we can always ask the further question: ‘Did the judge make the correct decision?’. As such, the fact that the judge has been successfully deceived into thinking that the rules have not been broken does not indicate that the rules have, in fact, not been broken. Instead, it might be that the rules *have* been broken, but the judge is ignorant of this fact. In other words, if it is possible for the judge to be wrong about her judgement, then nothing about the deceiving of the judge provides any evidence one way or the other as to whether the deception is or is not part of the game. If *this* is true, then there is no obvious way of distinguishing between deceiving the judge and, for instance, robbing the casino.

One way to respond to this worry is to take the view that the judge’s call *makes* something true or false. So, for instance, if an umpire in cricket calls a player out by LBW

(leg before wicket, meaning that the player has blocked a ball from hitting the wickets with their legs), then regardless of whether the ball *was* or *was not* going to hit the wickets, by virtue of the call it *becomes* true that the ball *was* going to hit the wickets. This is also the thinking behind the famous 'It's nothing until I call it' line used by baseball umpires.

If we took this route, then the fact that the judge in a game of pure chance has been deceived into making the call that the player has won the prize legitimately *makes it true* that the player *did* win that prize according to the rules of the game, whether or not they did 'in reality', i.e. according to a description of the facts of the matter by someone external to the game.

I do not think this is a useful strategy, however, for two reasons: First, it seems to take us down the 'divine command' path of the sport and games equivalent of the Euthyphro Dilemma. When it comes to the decisions of judges, there ought to be some independent standard that can be used to determine whether an umpire or referee is a 'good' umpire or referee; that is, whether they *judge well*, i.e. consistently make accurate calls. If no judge can ever be wrong in their judgment, then we also have no grounds to think that one judge is better or worse than any other (they are all, after all, correct 100% of the time). This seems implausible.

Second, this response implies that successful deceptions (which are judged as compliant with the rules) are part of the game, but that unsuccessful deceptions are not. This also seems implausible, as the same action becomes a game action or not depending on factors entirely outside the player's control, i.e. whether the judge picks up on the deception. It seems more likely, in my view, that *when performed* an action is or is not a game action (and that a judge who deems a non-game action as a game action, or vice versa, is making a mistake). This is not saying that it is not possible to bite the bullet on this second point. However, I am not willing to, since I want to also claim that unsuccessful deception can count as game activity.

Instead, I want to claim that what distinguishes deception from non-game actions such as robbing the casino is a kind of lusory attitude. Specifically, it is a matter of whether the player *accepts* the decision of the judges. This may seem, on the surface, like a restatement of the earlier 'It's nothing until I call it' view. However, it is importantly different in the sense that it rests not on the ability of the judge to alter the truth with her judgements, but rather on the willingness of the players to abide by the judge's decisions regardless of their accuracy. In other words, it involves a recognition that for a game to exist, there has to be rules; and that rules require an arbitrator. If so, the players must at the very least *respect* the authority of that final arbitrator, *even when they are wrong*. In this sense, then, whether the judge makes the *right* call is not the key issue. Rather, what matters is whether the player will *take* that call as authoritative and abide by it.

For instance, we can imagine a soccer game in which the referee awards a foul. The player who supposedly committed the foul may know full well that the referee is making an error, but they can respond to that error in one of two ways: they can accept the judgement as binding and hand the ball over to the other team, continuing the game; or they can hold on to the ball and/or refuse to continue playing. In the first case, we might say that the player is playing the game, since they consider themselves *bound* by the constitutive rules of the game, as they are interpreted by the referee. In the second case,

however, the referee's authority is rejected; the player does not consider themselves bound by the rules and they do not hold a lusory attitude towards the game.

Applied to purely professional games of pure chance, we can imagine a casino refusing to pay out at roulette due to the player using a roulette computer. The player can have two attitudes to this: they can accept that they were caught fair and square and recognise that, by virtue of this, they do not *deserve* the prize; or, they can be upset that their gambit failed and resent the judge for getting between them and the benefit they sought by cheating. In the first case, they acted to achieve their prelusory goal *solely* via the game, i.e. the game itself was integral to earning the prize. In the second case, the game was *purely* instrumental; if robbing the casino had had better odds of success, they would likely have done that instead.

Of course, we may never *know* the intentions of the player sufficiently to be able to establish in practice whether their actions are game actions. This is especially the case because it is only in the situations where the player is *caught* in their deception that they have the opportunity to show their respect for the judge's authority. In situations where they are successful in deceiving the judge, whether or not their actions are game actions can only be established in practice by the counterfactual of what they *would* have done had they been caught, which is information we do not have access to. Nevertheless, since the concern here is metaphysical, i.e. whether or not the actions are *really* part of the game, rather than epistemological, i.e. whether or not we can *establish* whether the actions are part of the game, this is not necessarily a problem for my view.

This approach, then, responds to the two concerns I raised with the 'It's nothing until I call it' stance: First, since what matters is *accepting* the authority of the judge, it is quite possible that the judge can be mistaken. The issue is not whether the judge is *correct*, but whether the players *accept* the judgements. So long as they do, the game continues. We can accept that judges are fallible, while at the same time recognising their role in allowing the game to exist via their adjudication as to whether the formal rules of the game have been adhered to.

Second, it allows for both successful and unsuccessful deceptions to be considered as part of the game. An unsuccessful deception undertaken with appropriate respect for the finality of the judge's authority is just as much a game action as a successful deception in which the judge (mistakenly) asserts that the formal rules have been followed. So long as the player follows the judge's decisions, even when they consider them incorrect (and even when they are, in fact, incorrect), the player is still participating in the game. The judge, therefore, has no role in deeming an action within or outside the game; they can only state that an action follows or does not follow the formal rules, which is a separate issue. Whether or not the action is within or outside the game is determined by whether the player has adopted a *game-playing* attitude, i.e. they accept the judge as the final arbiter of the formal rules of the game.

This approach, however, can only be clearly applied to purely professional games of pure chance. The reason for this is that games with other ethoi than winning the benefit require not just a lusory attitude, but are also governed by some kind of constitutive prelusory goal. For example, in a competitive tennis match, the game—and how to interpret the rules of the game—is governed overall by it being a test of athletic excellence. Being a test of athletic excellence *constitutes* that game. This means that we have a standard independent of the lusory attitude that can be used to

evaluate whether the rules being broken are regulative or constitutive, and therefore whether the action is a game action or not. In this case, then, while a lusory attitude is required for game-playing to occur, so long as this condition has been met, it is possible for the ethos of the game alone to determine which actions are within or outside the game. In other words, a lusory attitude is necessary but not sufficient for game-playing. In purely professional games of pure chance, on the other hand, the prelusory goal of ‘winning the benefit’ seems to allow, on the face of it, any action whatsoever, so is not useful for distinguishing the breaking of regulative rules from the breaking of constitutive ones (and therefore which actions are within or outside the game). Since the prelusory goal offers no guidance on this matter, in purely professional games of pure chance it is *only* to the lusory attitude that we can look to determine game and non-game actions.

### Imaginary Playing and Recognisability

One criticism of this view—and specifically of the claim that the lusory attitude as I have described it here is what determines whether a game is being playing—is that this condition lets in far too much. For instance, imagine that I work security in a casino from an office, where I watch the games being played on screens. I might focus my attention on a specific game of baccarat, take a chip out, place it on the table in front of me, and say to myself ‘I bet this on the dealer’s hand.’ On top of this, I determine to fully accept the dealer’s judgment about whether I win or lose, i.e. I have the correct lusory attitude. As it turns out, the dealer’s hand wins, but since the dealer was not aware of my bet, I do not win anything. Did I just play baccarat? According to my account, it would seem that I did, since I have the requisite lusory attitude and have accepted the dealer’s (implicit) judgement that only players who place their chips on the table can win the game.

I would say two things here: first, I am not wholly persuaded that we can entirely rule out such cases. Particularly where the actions expected of the player are minimal, e.g. deciding where to place their bet, it may be possible in some cases to ‘secretly’ play a game, though the judge is almost certainly never going to be persuaded that the player has ‘won’ the game under such circumstances.

Putting this aside, however, we might say the following: for a game to count *as* a particular game, it has to be *recognisably* that game. I am aware that this is quite a vague criterion for game-playing, but it is not, I think, an unreasonable one.

An analogy here is the idea of musical keys. Standardly, each musical key is composed of seven of the twelve notes of an octave. For a song to be *in* a particular key it should only use those seven notes. However, composers and musicians can and do use ‘outside notes’, i.e. notes not in the key, without the piece being considered to no longer be *in* that key. The question is, how many outside notes are too many before the piece overall is no longer in the intended key? There is no clear way to determine this. Certainly, if the musician *claims* to be playing a piece in C Major (consisting of A, B, C, D, E, F, and G) but the piece is predominantly played using C# rather than C, F# rather than F and G# rather than G, then we might legitimately claim that the piece is in A Major rather than C Major. That is, if the chosen notes *predominantly* fit another system than C Major, then we have good reason to think that C Major is not what is being played. Similarly, if there is *no*



system to the notes chosen, then no matter what the musician says, there *is* no key being used (putting aside dodecaphony).

The point I am trying to make here is that there are *clear* cases where a key is being used, despite the existence of outside notes; and there are *clear* cases where a key is *no longer* being used, due to the existence of *too many* outside notes. However, there are a range of cases in the middle in which the question of whether the piece is being played in a particular key is fundamentally uncertain. This is, I think, a recognition that keys, like 'heaps' of sand, and games, are not natural kinds and that therefore establishing strict boundaries conditions in all cases is simply not possible, both epistemologically *and* metaphysically.

To relate the analogy back to games more directly, there is rule breaking in which the *quantity* of rule breaking is such that we can still recognise a particular game being played. So, for instance, if a player engages in past posting in baccarat, this is simply one rule being broken amongst many. Overall, the game is still recognisably baccarat. Conversely, trying to rob the dealer breaks *so many* rules of baccarat that no observer could recognise that there is a game of baccarat being played. However, I cannot offer any clear guidance as to where the line can be drawn; I am not able to determine what *degree* of cheating prevents a game from being recognisably *that* game. Further, I am not sure any clear guidance *can* be offered. However, since I am arguing here *not* that *any degree* of cheating can in principle be within the game, but rather that any *kind* of cheating can in principle be within the game, this is not directly a problem for my view (so long as one is comfortable with being unable to make hard-and-fast determinations as to where the border between game and not-game lies).<sup>2</sup> In other words, I am arguing here that all rules in purely professional games of pure chance are regulative rather than constitutive; but this does not rule out that some *quantity* of rule breaking causes the game to cease.

### Mistaken Judgements and Misinterpretations

Conversely, relying on a lusory attitude to determine whether a move is a game or non-game action might be considered too *strong*. After all, it is possible for the dealer to make mistakes. For instance, if the dealer misreads a winning hand as a losing hand, and if game-playing is determined by whether the players adopt a lusory attitude in which they accept the decisions of the judge, then does this not mean that the player is forced to meekly accept mistaken judgements? Does it even allow for the possibility that judges *can* be mistaken?

I argue that this criticism is not as much of a problem for my view than it seems. I want to put aside the idea of appealing to a higher authority, such as a pit boss. After all, pit bosses can make mistakes as well, so this response merely pushes things back a level. Instead, I suggest that this criticism insufficiently distinguishes between matters of fact and matters of rule following. Dealer mistakes are often based on simple error, e.g. reading a card as a 9 when it is actually a 6. Pointing out where dealers have made perceptual errors does not seem, to me, to be denying the dealer's ultimate authority to make judgements about whether the rules have been followed. Rather, it is a matter of pointing out that the *facts* on which the dealer has *based* their judgement are incorrect. Asking the dealer to revisit a decision on this basis is not undermining their authority.

What is more, since facts are external to the game, such a request is not appealing to some internalist set of rules, which is a strategy I have already ruled out.

Of course, dealers might make errors and then, even when appeals are made, refuse to correct them. In such a case, that is unfortunate for the player; they may legitimately accuse the dealer of judging *badly*. But this does not mean that the game was never played.

When it comes to the judge ‘misinterpreting’ the *rules*, things are a little bit different. After all, unlike in the case of the facts of the matter, I cannot claim that there is some standard outside of the judge’s decision as to whether the rules have or have not been followed. It may be that, at a certain point, the judge’s determinations are so far from the formal rules of the game that we might no longer claim that the original game is being played any longer. Here I would appeal to a similar strategy to the one I outlined earlier: at a certain point, a game ceases to be *recognisably* that game. It may not be possible to draw this line clearly, but if a sufficiently large quantity of the formal rules are being broken—even if this is by the judge—then we can legitimately claim that the original game is not being played. When just a few rules are being interpreted idiosyncratically, however, then the player *does* need to accept these judgements, and if they do we can assert that the game is being played. By analogy, a litigant can make a case for their interpretation of the law in a supreme court, but if the judges’ decision goes against them—even if that decision is an idiosyncratic interpretation of the law—they must accept it if they are to claim to be participating in a shared legal system.

### Game-Cancelling Actions

Finally, I want to address the issue of game cancelling actions. For instance, the dealer might accidentally deal too many cards, or deal the cards face up. In such cases, this is considered a ‘misdeal’ and the hands are voided. On the face of it, this seems to mean that no game has been played in such cases. If we accept this, and extend it to cheating, then we seem to run into problems. For instance, if I am caught card marking and the dealer catches me at it, then the game seems to be ‘cancelled’ and all hands are voided at that point. If so, then presumably this means that such cheating is outside the game, since it annuls the previous play.

This criticism, however, is question begging. That is, it seems to assume that the formal rules are what constitutes the game. But I have already denied this. I am perfectly content to bite the bullet by saying that a judgement of ‘no deal’ is part of the game. If the dealer makes an error in their dealing, then a call of ‘no deal’ is a game action by the dealer. They are applying their interpretation of the formal rules, which allows for the contingency of dealer error and provides a remedy: the call of ‘no deal.’ This is still the case even if the call is made later in the game, such that it retroactively ‘annuls’ earlier game actions. If, for instance, the dealer only later realises that one player was given too many cards, then they can call a ‘no deal’. This does not mean, however, that the game was not being played prior to this call. Rather, it simply means that *because* of the no deal call, the game actions do not have their usual effect. In other words, it is not that the dealer determines that the game was not being played; rather, they determine that they were mistaken—at the time—about the effect those actions should have had on the game. ‘No deal’ in such a circumstance is a way of retroactively recognising their error.

We can say the same thing about deliberate cheating. If I use magnets in roulette and the dealer finds out about this after the fact and calls ‘no spin’, then (so long as the other conditions I have discussed have been met) what this means is *not* that the spin was not an instance of roulette-playing, but rather they are activating a contingency that is *within* the game to remedy an instance of rule-breaking (such as a penalty kick for a handball in soccer). The fact that this means that nobody ‘wins’ the spin and that the players all get their money back does not mean that no game was played, but that *according to the judge’s application of the rules* no winner can be determined. The players receive their bets back because, within the game of roulette, that is the result of a ‘no spin’.

In other words, if we are to assume that no spins, no deals, and other such calls are outside the game, then we are already assuming an understanding of game-playing that I have explicitly rejected. Since I am perfectly happy to accept such actions as game actions, then this never really arises as a problem for my view.

## Conclusion

In this paper I have argued that all instance of deceptive cheating in purely professional games of pure chance can be acceptable (in principle), in the sense that such actions do not necessarily invalidate the game. Since the way that the formal rules are applied depends on what the ethos of the game is, and since *purely professional* games of pure chance exist solely as an opportunity to win the external benefit of the game, then any actions that involve breaking the formal rules of the game with the intention of deceiving the judge into thinking that the formal rules have been followed, and thereby voluntarily relinquishing the benefit of the game are ‘part of the game,’ so long as the actions are undertaken with respect for the judge’s authority. All such deceptions are ‘strategic’ deceptions, rather than ‘definitional’ ones. Not all possible actions to ‘gain’ the benefit of the game—even if they are more efficient—constitute ‘winning’ the benefit (because they are undertaken without respect for the finality of the judge’s decision, and are therefore not performed in a way that binds the player within the system of the game). However, so long as the cheating is undertaken with the appropriate lusory attitude, then *any* instance of cheating in purely professional games of pure chance, no matter how outlandish, can still be a case of legitimate game-playing.

## Notes

1. There are some tricky questions, of course, as to whether deception undermines the voluntariness of the judge’s actions. However, my focus here is simply that the handing over of the benefit be *non-coerced*.
2. Of course, this is not strictly accurate, since ‘robbing the casino’ might count as a ‘kind’ of cheating that I disallow. Perhaps, then, an additional criterion should be added, that the instance of cheating be relatively self-contained, i.e. it does not simultaneously break a wide range of rules.

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