Regulating a "Pariah" Industry: The Need for a Responsive Approach in Gambling Markets

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Abstract

Gaming regulators are uniquely positioned state agents, who must consider contradictory goals in their day-to-day actions. They must protect the public (and maintain the legitimacy of government) but are also responsible for ensuring that the gaming industry provides needed revenue to the state. To that end, regulators are not only responsible for promoting the legitimacy of the government but also, to some extent, must consider how they can encourage the legitimization of a previously illegal behavior. Prior research has examined regulators' attempts to balance such "structural contradictions" through their licensing process, but little research has been done on regulatory responses to licensee violations. The present review suggests that a transparent and "responsive" regulatory response to such violations would benefit regulators, the industry, and the public. I review the contradictions inherent in regulating the gaming industry, describe the "Responsive Regulation" approach, and then detail how "Responsive Regulation" could uniquely benefit gaming. I conclude with a call for more collaboration between regulators, practitioners (including industry participants), and academics.

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Introduction

Socio-legal scholars have long examined the government's role in regulating "vice" industries—those industries providing "taboo products" and services such as alcohol, guns, and gambling (Matthews, 2016). By researching the legalization of vice behaviors, we learn about the move from a relatively simple prohibitory approach to a much more complicated regulatory process that must redefine the behavior and draw new boundaries between what is legal and illegal (Cosgrave and Klassen, 2001; Skolnick and Dombrink, 1978). Even as these behaviors become legal, a political struggle remains in determining whether they are morally acceptable and how to ameliorate potential harms (Spapens, 2012). Moral ambiguity, in turn, creates a problem for state regulation of vice industries; newly legitimate businesses may not feel the need to be regulated strictly, yet the industry needs regulation in order to enhance its social reputation (especially when organized crime groups have been historically involved in the industry; de Graaf et al., 2011; Mun, 2002; Skolnick, 1978). The United States' federal and state governments have repeatedly modified their stance on behaviors to reflect changes in social conscience, as with Prohibition, Jim Crow, abortion, and (more recently) same-sex marriage and marijuana. An understudied aspect of these legalization movements is the actual operation of government agencies and how these agencies ensure both private and public interests are protected. Of particular import is how states regulate vice behaviors, which pose potentially significant harm if not monitored effectively.

Jurisdictional governments benefit from the revenue generated by gambling (Williams et al., 2011; but see Walker and Jackson, 2011) and many generally feel that having the freedom to gamble is a social benefit (Basham and Luik, 2011; Rockloff et al., 2017), yet there is also much evidence that the citizens of those locations with legalized gambling suffer a variety of social costs (Williams et al., 2011). Regulators are responsible for prescribing and enforcing licensee efforts to protect consumers and the public from harm and prevent crime in licensees' venues. For example, the Pennsylvania Gaming Control Board recently fined two casinos $15,000 total for issuing players' cards and sending promotional materials to self-excluded gamblers—those individuals who recognized that the lure of gambling was problematic for them and asked casinos to a) make sure the casinos were not incentivizing their (the gamblers') play and b) to take steps to prevent the players from entering the casino premises (Pennsylvania Gaming Control Board, 2013). Another example comes from the Securities and Exchange Commission (SEC), who from January of 2015 – July of 2016 fined five different casinos for failure to comply with the Bank Secrecy Act (Financial Crimes Enforcement Network, 2016). The SEC found that one of those casinos had been violating anti-money laundering statutes (e.g., by failing to have an internal compliance program or internal compliance manager) since 2011.

Regulatory violations by gambling licensees can have severe consequences for illegal behavior as well as addicted gamblers. Take the violations mentioned above—by sending promotional materials to self-excluded gamblers, licensees were ignoring the potential harm caused by problem gambling, which includes increased suicidality, legal problems, bankruptcy, criminal behavior, and family problems (e.g., divorce, child maltreatment, and dysfunction; see Dannon et al., 2007; Delfabbro and King, 2012; Gerstein et al., 1999; Séguin et al., 2010; Weinstein et al., 2015). As in the second case, if licensees allow money laundering to occur, licensees may be implicitly supporting drug trafficking, terrorism, and human trafficking by organized crime groups internationally (Gilmore, 2004; Godinho, 2013; Levi, 2002). Other socially injurious behaviors such as environmental degradation (e.g., To et al., 2011), encouraging risky alcohol consumption (e.g., Hancock, 2011), or neglecting safety and health requirements (e.g., Berman and Post, 2007; McGinley, 2012) clearly impact the communities in which gambling licensees operate and the people who support licensee operations.

However, this topic—why violations occur and how regulators can effectively respond to them—remains understudied. Although much research has examined regulatory strategies to control crime and prevent harm in the gambling industry, the literature typically focuses on: how regulators use licensing requirements to prevent criminal elements from entering the industry (see Homeyer, 2011; Sayre, 1994; Skolnick, 1978), the need for policymaking to prevent harms (see Bogart, 2010; McGinley, 2012), corporate social responsibility in the industry (see Buchanan et al., 2009; Gainsbury et al., 2013; Hancock et al., 2008; Miers, 2016), or the legal liability that licensees should/should not have for failing to prevent problem gamblers from accessing their venues (Antolak-Saper, 2010; Bauer, 2006; Sasso and Kalajdzic, 2006; Slavina, 2010). What tends to be ignored is the systematic study of regulatory responses to licensee violations *after* noncompliance occurs. In other words, little empirical research has examined in-depth regulatory *responses* to violations and how such responses are dictated by the need for consumer protection, industry legitimacy, and government legitimacy at the same time (but see Hancock, 2011 and Skolnick 1978).

This paper sets out to do two things. First, I use a criminological theory to articulate the specific conflicts faced by gambling regulators as law enforcers and architects of regulatory standards. Second, I focus on how those State agents can manage inherent contradictions as they motivate compliance with regulations (which, in turn, prevents harms such as crime victimization or problem gambling).[1] I argue that agencies can (and probably already do) handle the contradictions inherent in their jobs by using a "Responsive Regulation" approach. Responsive Regulation (Ayres and Braithwaite, 1992), at its most fundamental level, recommends that regulators incorporate both punitive and cooperative strategies when trying to motivate regulatory compliance. Regulators need to clearly communicate what will happen when noncompliance occurs, but cannot assume that a "one size fits all" response to noncompliance will work. Focusing primarily on gambling regulation in the U.S. (but drawing heavily from the international gambling literature), this paper argues that regulators should focus on: 1) articulating clear standards for corporate social responsibility as well as communicating and executing clear consequences for noncompliance with those standards, and 2) using Responsive Regulation as a framework for responding to noncompliance.

In Section II, I briefly summarize regulators' responsibilities before describing Chambliss's (1993) theory of Structural Contradictions and its relevance to the gambling industry in Section III. In Section IV, I argue that regulators can handle structural contradictions in the gambling industry by adopting a Responsive Regulation strategy (Ayres and Braithwaite, 1992; Braithwaite et al., 2007; Braithwaite, 2013) and outline the benefits of clearly articulating such a regulatory approach. In Section V, I discuss the need for more research collaboration between regulators, practitioners, and academics.

Responsibilities of Gambling Regulators

Understanding the conflicts involved in being a gambling regulator first necessitates an understanding of the regulators' responsibilities. Although gambling regulators' specific activities are numerous, they perform four basic functions: 1) policy development/rulemaking; 2) licensing; 3) revenue collection; and 4) monitoring and enforcement (Belletire, 1999; National Indian Gaming Commission, 2016a). I briefly review these here:

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1 A reviewer noted the lack of empirical evidence for this assumption that regulatory compliance is related to harm minimization. My search of the gambling literature has failed to turn up any research using data to directly link licensee compliance with harm outcomes, but evidence from other domains supports such an assumption. See, as a few examples, Wakefield et al.'s (2000) study on smoking laws; Mendeloff's (1984) study of OSHA violations and workplace accidents; and corporate noncompliance events linked to injuries/death in mining operations (Canada Department of Justice, 2002), automobile pollution (Barrett et al., 2015) and consumer products (U.S. Department of Justice, 2015).

- *Policy Development.* Regulatory agencies generally are charged by legislators to formulate rules in a specific area; they are expected to develop special knowledge about the topic and formulate rules accordingly. Such policies are meant to protect the public and minimize the potential community harms that come from legalized gambling (National Indian Gaming Commission, 2016b; Nevada Gaming Control Board, 2016; New Jersey Casino Control Commission, 2016; Securities and Exchange Commission, n.d.).

- *Licensing.* Many scholars argue that the most significant and distinguishing feature of gambling regulation is the duty of regulators to control who enters the industry. This is the way in which regulators establish legitimacy of the industry—by preventing known criminals from employment in the industry and being able to withdraw the licenses of noncompliant entities (Homeyer, 2011; National Indian Gaming Commission, 2016b; Nevada Gaming Control Board, 2016; New Jersey Casino Control Commission, 2016; Securities and Exchange Commission, n.d.).

- *Revenue Collection.* In many jurisdictions, gambling regulators are responsible for defining the financial obligations of licensees, collecting revenues and ensuring that licensees are paying the correct amount of taxes and fees. They also decide how revenues will be distributed and used by the State. They will sometimes work with state/jurisdictional Treasury Departments to accomplish this, but are often responsible for auditing (or bringing in outside auditors) and monitoring financial statements (Gale, 1994; National Indian Gaming Commission, 2016b; Nevada Gaming Control Board, 2016; New Jersey Casino Control Commission, 2016; Securities and Exchange Commission, n.d.).

- *Monitoring and Enforcement.* Of most import to this paper, regulators are charged with protecting the public by ensuring that licensees comply with the rules and regulations set forth by the agency. They conduct inspections of gambling venues, respond to complaints by patrons or competitors, and investigate potential violations of rules. They often handle violations through administrative and/or civil courts and can sanction offenders using injunction orders, monetary penalties, license suspension or revocation, etc. In particularly egregious cases, regulators will work with state attorney generals (or the relevant legal authorities in the jurisdiction) to pursue criminal prosecution of a licensee, often in conjunction with civil cases. Criminal prosecutions allow the regulators to have individual licensees arrested and subject to formal criminal justice sanctions such as incarceration, probation, and punitive fines (Friedman, 1994; National Indian Gaming Commission, 2016b; Nevada Gaming Control Board, 2016; New Jersey Casino Control Commission, 2016; Securities and Exchange Commission, n.d.).

The monitoring and enforcement component of gambling regulation is relatively understudied. There is much literature on policy development, the licensing process, and revenue collection. However, scholars have neglected to study how regulators respond to licensee violations in a way that protects citizens and prevents future noncompliance (while also protecting the legitimacy of the industry). A criminological perspective is useful for understanding the importance of regulatory actions in balancing the contradictory needs of the industry, public, and the State.

Structural Contradictions in the Gambling Industry

The legalization of vice is often motivated by the State's need to generate revenue, which can produce conflict between the State's duty to protect its populace and its desire to retain funding for programs (Cosgrave and Klassen, 2001; Skolnick,

1979; Walker and Calcagno, 2013). Structural contradictions theory (Chambliss, 1993) is a useful framework for understanding the struggle between maintaining long-term economic interests of the State while maintaining legitimacy and protecting those in lower socioeconomic classes. Chambliss argues that laws/policies are generally created to resolve conflicts between society's elites and the working class; such conflicts are inherent in a capitalist society because of fundamental contradictions. The struggle for profits by the working and ruling classes are oppositional—as the working class struggles to make a profit, the interests of the ruling class are hurt (and vice versa). Such a contradiction would lead to conflict if not mediated by the State. As in other structural Marxist theories, Chambliss notes that the ruling economic class has a strong influence on government policies and is often able to deflect attention from their members' malfeasance while criminalizing the behavior of workers. Chambliss's perspective differs from traditional Marxist theories, though, as he recognizes the need of the State to be independent from the power elite—if the government was purely an instrument of the powerful, the working class would eventually revolt and social order would be severely compromised. As such, the government must (at times) enact policies to benefit the working class—this is why there are occupational health and safety laws, consumer protection laws, securities regulations, and other policies that are detrimental to business interests. However, even when laws are passed to protect the lower class, the economic elite and the government must ensure that revenues continue to be generated and used for the sustenance of society (Haines, 2016; Rodriguez and Barlow, 1999).

In the gambling industry, an inherent conflict exists whereby consumers are possibly harmed by industry efforts to enhance profits, while the industry might be harmed by burdensome consumer protections. It is up to gambling regulators to strike a balance—to protect consumers (and maintain their own legitimacy) while also protecting the industry (and benefit from revenue generation). In order to generate revenue, the industry is also in need of the State to enhance its social reputation (Cosgrave and Klassen, 2001; Humphreys, 2010; Panasitti and Schull, 1994; Skolnick, 1978). In other words, it's not just a matter of *legalization* but also a need for *legitimation*, or "the social process of making a practice or an organization congruent with the configuration of other values, institutions, and social norms." (Humphreys, 2010:491; see also Cosgrave and Klassen, 2001) Today, gambling is legal in some form in most U.S. states. As of 2013, 28 states had casino gambling (American Gaming Association, 2013) and in 2016, 48 states allowed gambling through lotteries, casinos, Native American casinos, or pari-mutuel betting (Dadayen, 2016). Internationally, 153 countries have casino gambling, for a total of 7,243 casinos available worldwide. One directory lists 3,755 online gambling sites and 10,463 online slots globally.[2] As Banks (2017: 2) describes:

> "Dwarfing the revenues of other forms of entertainment such as music, movies, and theme parks, legal gambling is a hugely profitable and powerful industry of aleatory consumption. Gambling is highly lucrative, with estimated global gaming revenues reaching US$423 billion in 2014 (Morgan Stanley, 2015). Land-based casinos, which constitute the 12th largest industry in the world, accounted for 35 per cent (US$146 billion) of global gaming revenues, lotteries contributed 29 per cent (US$121 billion), whilst 'other gambling', such as sports betting and pari-mutuel racing, and online gambling represented 28 per cent (US$118 billion) and 9 per cent (US$37 billion), respectively. Today, few regions of the world remain untouched by the onset of global gambling."

2 These international casino and online gambling data come from Casino City's directory of casinos and online gambling sites (http://www.casinocity.com). Although using numbers from a sponsored page is not ideal, I was not able to find a comprehensive count of casinos and gambling sites anywhere else.

On the one hand, the legalization of gambling provides governments with revenues that allow them to keep taxes relatively low and enable them to fund social programs which otherwise would be unaffordable. For local communities, the presence of a casino provides employment and increased tourism, while online gambling companies also provide jobs. Yet, much concern remains about public participation in games of chance. Gambling has been associated with increases in street crime, occupational crimes, political corruption, individual bankruptcies, as well as mental and familial dysfunctions resulting from problem gambling (Bogart, 2011; Cosgrove and Klassen, 2001; de Graaf et al., 2011; Kingma, 2008; Walker and Calcagno, 2013), albeit inconsistently (see, e.g., Chang, 1996; Moufakkir, 2005; Nichols et al., 2004; Park and Stokowski, 2011).

In the gambling industry, State intervention is important to legitimation; the public is not likely to trust businesses unless the government can ensure that harm is minimized (Gainsbury and Wood, 2011). At the same time, too much government intervention creates burdensome requirements that might hinder profit maximization and decrease the competitiveness of licensees (Cabot, 1994). The question becomes one of how regulators in the gambling industry are able to resolve conflicts arising from such contradictory outcomes – how they are able to balance industry interests with public safety and other government mandates. I discuss these divergent regulatory objectives in more detail below.

The State's responsibility to prevent harm to the public

Such regulatory role conflicts are not unique to gambling–similar issues emerge in alcohol prohibitions (see Stockwell et al., 1997), tobacco laws (see Cohen et al., 1999; Haile, 2009), pornography (see Cronin and Davenport, 2001), and recent marijuana legalization efforts (see Caulkins et al., 2015). The unique aspect of gambling is that the primary purpose of regulation is not to prevent *physical* injury to consumers, but rather financial harm and collateral consequences to the community (Cabot, 1994; Gainsbury et al., 2014). The impetus for strong regulation is thus weaker, therefore regulatory approaches may be more easily influenced by societal and political whims (compared to alcohol, tobacco, or marijuana).

Of course, the potential harm to the public should not be minimized. One possible consequence, problem gambling, poses unique challenges to regulators, at least partially because gambling addiction is subtler than other addictions. There are no physiological symptoms of problem gambling (versus drunkenness or being high), there are no discrete definitions of how much gambling is "excessive", and a certain amount of gambling that is recreational for one individual might be problematic for another person depending on the income and available leisure time for each individual (Gainsbury et al., 2014). Thus, "[a] dilemma for policymakers is that the characteristics of gambling that lead some players into serious harm can be much the same characteristics that make [gambling] fun for recreational gamblers … Therefore, policies must consider the most appropriate and effective interventions that balance the needs of individuals (recreational vs. problem gamblers) and society." (Gainsbury et al., 2014: 773-774)

Regulators can address this balance between growth/potential harm by mandating and promoting responsible business practices. In doing so, they improve customer experiences, which then helps the industry grow (Gainsbury et al., 2013; Gainsbury and Wood, 2011). As stated by Gainsbury et al., "The implementation and maintenance of fair and responsible practices, appropriate regulation and codes of conduct is in accordance with a profitable business model as it increases customer acquisition and retention." (Gainsbury et al., 2013: 235) Of course, this produces another contradiction whereby more legalization of gambling increases participation in gambling (Jacques et al., 2000; Pearce et al., 2008), as government approval and monitoring communicates to the public that the behavior is safe (Gainsbury and Wood, 2011). With this comes the potential for an increased prevalence of problem gambling (see Volberg, 1994). Regulators can resolve this contradiction by funding problem gambling programs

with revenue received by the industry (Gainsbury and Wood, 2011).

In the increasingly prolific online gambling industry, Gainsbury and Wood (2011) note that without regulation, Internet gamblers are being exposed to harm. These individuals are going to gamble despite prohibition, and without government monitoring, will do so on sites that are more likely to cheat or otherwise victimize them (see also Gainsbury et al., 2014). A prime example of such issues can be found in the Daily Fantasy Sports (DFS) industry. As of the time of this writing, DFS websites are illegal in several U.S. states (but are legalized and regulated in other countries) due to hazy classifications about whether such sites constitute gambling or not. As such, DFS operators are not required to follow consumer protection guidelines (Pickering et al., 2016). Without such protections or monitoring, the distribution of winnings are biased towards DFS participants who put tremendous amounts of effort into tracking statistics to "buy" the best players possible within a salary cap—in other words, casual players are inherently disadvantaged (Irwin, 2015) despite the advertising of such websites as "easy to play and easy to win" (Scott, 2017: 621). Due to the large amounts of money involved in DFS wagers and the frequency/repetitiveness of betting opportunities, participation in these leagues is thought to promote problem or pathological gambling behaviors (Lopez-Gonzalez et al., 2017; Pickering et al., 2016; Scott, 2017). Furthermore, without strong regulations to guide operators' internal compliance programs, unethical behaviors by employees are more likely to occur (e.g., the use of inside information by employees to win on other sites; Pickering et al., 2016; Scott, 2017).[3]

Similarly, Scott and Barr (2013) describe unregulated gambling in Gauteng, South Africa—specifically, the playing of dice, cards, and Fahfee (an illegal lottery). Gamblers there are incredibly vulnerable to exploitation; Fahfee participants do not know how the winning lottery number is picked, though there is evidence that the lottery operator picks the winning number based on the distribution of bets (i.e., it is not randomly chosen). "Runners" for the Fahfee lotteries have been victims of muggings. In dice games, players acknowledge that it is easy for game operators to fix the game in some way—to avoid this, players go to the same location to play where they can recognize the other players. Law enforcement officers in the area are bribed so the games can be played without many consequences.

Players in South Africa have mixed feelings about regulation. They recognize some of the deleterious consequences of gambling, but see the games as an important part of community life and feel that they actually do earn money from these games (reportedly, the winners will give other losing players some money from what they earned). They worry that legalization would increase the cost of participating in Fahfee if the operator had to pay taxes. Interestingly, the players of these illegal games perceive gambling at the legal local casino and through the legal state lottery as "rigged" or less fair than their illegal games, despite efforts to educate them about how the lottery numbers are drawn or suggestions that the casino could post the odds of winning. Scott and Barr (2013) argue that a strong educational program about gambling and risk assessment would be helpful, but that increasing law enforcement efforts would not be helpful—people gamble there despite knowing that it is illegal. It seems logical that, given the ineffectiveness of prohibition, legalization and monitoring would better allow the government to protect consumers. Clearly, monitoring and enforcement is an area where regulators must balance consumer safety concerns with industry growth.

The State's need to generate revenue

Although gambling has been legal in Nevada since March 19th, 1931 – and has spread throughout the United States since – the spread has not been consistent. Prohibitions and restraints on gambling have come and gone since 1931. Research demonstrates that legalization of gambling corresponds to government spending needs

3 Scott (2017:603 - 650) discusses possible regulations that would improve player protections as well as protect sports leagues from corruption.

– when "exogenous shocks" occur (e.g., the Great Depression, wars) that require revenue, gambling legalization is more likely (Sauer, 2001; see also Dadayen, 2016). Most recently, many U.S. states expanded access to gambling after the Great Recession. Dadayen (2016) shows that gambling revenue going to state and local governments increased by $500 million from 2008 – 2015. Schwartz (2016) also shows a national increase in commercial gambling revenues over time ($28.4 billion in 2001 compared to $39.5 billion in 2015).

Many scholars note that the gambling industry benefits from regulation. In a vice industry where the consumer could possibly be harmed by the product, regulatory oversight promotes the legitimacy of the industry and makes consumers feel protected (Gainsbury et al., 2013; Loh et al., 2015). Thus, with legitimacy comes increased consumption as well as more financing opportunities. In Nevada in the 1960s, the casinos were able to get financing from legitimate banks/lenders after strong regulations were put in place, and thus were able to distance themselves from criminal enterprises. This ability to receive legitimate financing was further enhanced with Nevada's Corporate Gaming Act of 1969. After this law passed, gambling became more integrated into the legitimate economy of that state (Panasitti and Schull, 1994). This happens generally in vice industries—with legalization and regulation, consumers are able to receive products/services from legal entities, rendering criminal enterprises unnecessary (and their presence diminished). Regulators set minimum product/service quality requirements to ensure safety, and transparency/monitoring of the market increases with assurances that potentially harmful consequences of legalization will be addressed by the State (Spapens et al., 2015).

However, too much regulation increases the cost of regulatory compliance for licensees. This increases the cost of gambling, which then reduces demand for gambling and revenue from gambling. Although regulation is needed to enhance and protect the industry's legitimacy, regulators should not create too much of a burden that reduces competition within the industry (and has the potential to push consumers to illegal gambling venues)—otherwise the State fails to benefit from legalization (Cabot, 1994; Planzer and Wardle, 2012; see also Haines, 2016). As Adams et al. (2009: 698) put it "… departments are often faced with the dual tasks of processing the financial benefit from gambling along with containing the harm… strongly enforced regulations would risk decreases in consumption and associated decreases in revenue, but the absence of any attempt to reduce harm would risk public approbation for failing in a duty to protect the weak and vulnerable."

Regulators have responded to this dilemma by working with the industry to develop regulations that are not overly burdensome, yet accomplish important public protections. For example, the United Kingdom's Home Office review of gambling regulations in 2000/2001 sought to make regulations more cohesive and also create regulations for Internet gambling. After this review, the regulators emphasized a tolerance for competitive practices (including decreasing regulatory burdens on gambling licensees) but also noted the need to consider possible consequences to society and local communities that might accompany the rise of betting venues (Miers, 2011). Furthermore, the Britain Gambling Commission explicitly discusses the need to balance regulatory burden and consumer protection with player agency and choice to pursue gambling as a recreational activity. They attempt to resolve this tension by emphasizing licensee conduct (e.g., the provision of gambling and compliance information to consumers) as a "social responsibility" of operators and by stressing the benefits of compliance to the operators themselves. The industry outwardly has accepted regulation as a method of alleviating public concern with gambling, which in turn benefits operators with increased consumption (Miers, 2016). This seems like a fruitful mechanism for regulatory agencies to pursue in their responses to violations— and one that could be incorporated into a broadly responsive, strengths-based

regulatory approach. In the next section, I recommend Responsive Regulation as method for responding to violations by licensees in such a way that considers all stakeholder interests.

A Proposed Solution: Responding Responsively to Gambling Licensee Noncompliance

I suggest here that the best method by which regulators can effectively promote casino compliance while legitimizing the industry is by 1) clearly defining rules and sanctions to be used if noncompliance occurs and 2) responding to noncompliance consistently using "Responsive Regulation" as their strategic framework.

Benefits of a Transparent, Clearly Articulated Regulatory Approach

Even without a "responsive" component, regulators would benefit from clearly articulating what will happen when licensees violate regulations. As Belletire (1999:2) stated:

> "The ability of staff, boards and commissions, and the courts to articulate their reasoning and relate that reasoning to…policy and purpose, helps to assure consistency and avoid arbitrariness in the regulatory process."

In other words, regulators should make their strategies explicit and public, clearly communicate what behaviors are acceptable and unacceptable, the behaviors that will be punished, and specific punishments to be expected when violations occur. A primary function of law is to communicate to all citizens what will be tolerated and what will not (Huang and Wu, 1994; Tyler and Darley, 1999)—this is no different in the regulatory domain. With clear prohibitions and a clear sanctioning strategy, the relationship between regulators and the regulated entity will be enhanced—the regulated community will be assured that violators are punished in a consistent manner and will know what to expect when they are found to be in violation. There has been much support for Procedural Justice Theory in the criminal justice literature—this theory says that individuals are more likely to see an authority as legitimate when they treat each alleged offender fairly and consistently with others, even if a punitive sanction is meted out (Rorie et al., in press; Tyler, 2006). By clearly articulating a sanctioning approach, violators will know that they are being treated in accord with agency policy, without bias. Transparency will also reduce the likelihood of "regulatory capture" accusations (Wexler, 2011).[4]

A highly public sanctioning strategy may not only improve relationships between the regulators and the regulated, but can produce compliance by licensees through two mechanisms. First, many gambling corporations are motivated to comply for reputational reasons (Planzer and Wardle, 2012). Thus, with more transparency of the sanctioning process (including publication of who is being sanctioned), one would presume that those corporations being punished would increasingly be subject to informal social controls. This is beneficial for the industry as a whole, not just individual violators—regulations affect all potential violators and a clear strategy can impact the norms and behaviors of the entire industry (Gainsbury et al., 2015; Hess, 2008; Netherlands Gaming Authority, 2016a). In fact, large Nevada casinos often monitor smaller casinos to prevent violations because they know that wrongdoing by one or a few parties might have implications (e.g., increased regulations, impaired reputation) for the entire industry (Buchanan et al., 2009).

4 Regulatory capture refers to the idea that public sector employees come to serve the private entities they are supposed to monitor and no longer act on behalf of the public. In the regulatory domain, regulators might come to sympathize with those entities' interests and, as a result, create lenient policies, water down or repeal existing policies, become lax in monitoring the industry, and/or sanction the regulated community lightly. With clear and public sanctioning, the public is better able to monitor regulators and ensure the agency is following its directives (Ayres and Braithwaite, 1991; Etzioni, 2009; Lodge, 2004; Wexler, 2001).

Second, increased transparency could produce compliance through increased awareness/education of consumers about the agencies involved in preventing and/or sanctioning corporate crime. Thus, consumers might be more willing to report concerns/offenses, which enhances monitoring of corporations (see Rebovich et al., 2000; Titus and Gover, 2001; Van Wyk and Mason, 2001). An example of such a strategy is the Netherlands Gaming Authority's (2016b) use of social media (e.g., Facebook, Twitter, LinkedIn) to inform consumers about their rights and responsibilities, provide any gambling-related warnings relevant to consumers, and receive consumer complaints. Although it may seem counterintuitive, transparency can also help reduce regulatory agency burden. Gainsbury et al. (2013) note that consumer disputes in the Internet gambling domain may be driven by the lack of regulatory transparency in that domain; if consumers knew exactly what constituted a crime or an issue worthy of disputation, they may be more likely to report truly harmful behaviors and less likely to escalate minor and lawful disagreements.

Clearly articulated policy will also be beneficial since transparency in one jurisdiction can lead to adoption of the strategy in other jurisdictions. In fact, it would be advantageous to see international collaboration in the development of an enforcement strategy, especially with the advent of Internet gambling and with increasingly multinational casino corporations. Given that it is an international enterprise, industry participants should work with governments to design and enforce social responsibility mandates. As Gainsbury et al. note, "The benefits of aligning regulation between jurisdictions include the promotion of international consumer protection standards and sharing resources such as research on best practice and the development of effective responsible gambling resources… harm minimization policies should be implemented as enforceable regulations, as opposed to voluntary codes of conduct. This is important to convey the responsibility of both governments and industry to ensure that consumers are adequately protected." (Gainsbury et al., 2014: 783)

Responsive Regulation: The Fundamentals

Responsive Regulation (Ayres and Braithwaite, 1992; Braithwaite, 2002; Braithwaite, 2011) is the most appropriate tactic for handling conflicts between various interest groups and supporting responsible industry growth. The Responsive Regulation approach stems from a desire to reconcile "laissez-faire" interests with those arguing for stronger government interventions.[5] There are three main components to Responsive Regulation that are most important for gambling regulators to consider: the Enforcement Pyramid, Tripartism, and the need for a strengths-based approach.

The Enforcement Pyramid. Responsive Regulation bridges deregulation and pro-regulation camps by recommending that regulators, when responding to violations, think not just about choosing a "command-and-control" strategy (characterized by the use of punitive sanctions and adversarial relationships between state actors and those in the industry) *or* a cooperative/persuasive approach (e.g., instead of fines or criminal cases, educating corporations and providing assistance in developing internal compliance programs). Instead, Responsive Regulation recommends the use of an "enforcement pyramid" in which initial offending by a licensee elicits regulatory attempts to educate and instill a normative desire to comply. This initial "cooperation/education" is beneficial for many reasons. Regulators benefit because companies are more knowledgeable

5 A reviewer commented on the similarities between "Responsive Regulation" and "risk-based regulation." The two approaches are fundamentally different (though there is some overlap). Risk-based regulation prescribes how regulators should be targeting enforcement resources on certain entities (i.e., the allocation of limited resources). Responsive Regulation prescribes a flexible enforcement response that matches the motivations/capacity of entities in hopes of improving the regulatory relationship and increasing compliance. For a good overview of how two concepts differ as well as how they complement one another, see Black and Baldwin (2010).

than regulators about how best to improve internal corporate policies and procedures so compliance is achieved more easily. A cooperative approach also motivates self-disclosure from companies (thereby improving the likelihood of regulators learning of noncompliance) and noncompliant parties are less likely to resist regulatory interference administered in this way. However, should noncompliance continue, regulators would escalate to increasingly punitive sanctions.[6]

Figure 1 demonstrates what an enforcement pyramid might look like for gaming regulators.
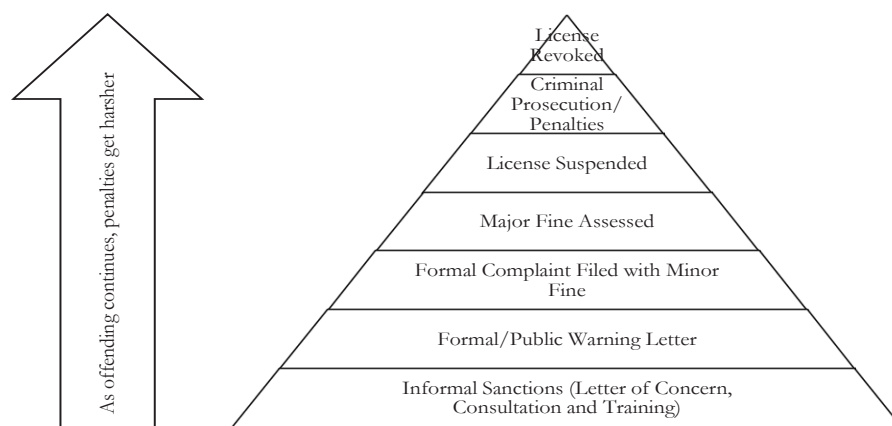

Figure 1. Example Enforcement Pyramid for Gaming Regulators

By allowing for both cooperation and punitiveness, Responsive Regulation allows regulators to maintain long-term interests of capitalism (by allowing licensees to operate fairly unencumbered as long as compliance is evident), but also protects the citizenry (by implementing sanctions when harm or repeated violations threaten consumer health). Regulators can also reduce adversarial encounters or relationships with the regulated community (which can enhance compliance efforts; Braithwaite, 2002, 2011; Sherman, 1993; Tyler, 2006), but companies cannot expect to offend and get away with it. Monitoring can be targeted at those licensees who have a history of offending, or continue to offend, while trusting the remainder of the industry to self-regulate their behavior (e.g., through the creation of effective internal compliance programs subject to regulatory approval and monitoring; Cabot and Preber, 2008). It's important to note that regulators must commit to escalating sanctions and the application of significant penalties when noncompliance occurs—without a credible threat of sanctions, cooperation is less likely during initial regulatory responses (Ayres and Braithwaite, 1992).

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6 A reviewer asked whether the pyramidal structure of the theory is more fluid than depicted here, due to mitigating circumstances, degrees of severity, and situational circumstances involved for each offense (see also Baldwin and Black, 2008, Mascini and Wijk, 2009). Braithwaite (2006: 887) specifies that the regulatory pyramid and escalation of sanctions should be used in all situations such that "…however serious the lawbreaking, our normal response is to try to have a dialogue first for dealing with it, to only override this presumption is there are compelling reasons for doing so." Thus, regardless of the circumstances, regulators should always engage in dialogue before escalating to sanctions, and should de-escalate once the regulated entity demonstrates a commitment to compliance. In doing so, regulators develop more trust and legitimacy among the regulated, which make sanctions more credible and compliance more likely.

Tripartism. Another primary component of Responsive Regulation is the idea of "Tripartism" or third-party inclusion – this means that the public, non-governmental organizations, and other relevant stakeholders should be involved in monitoring *both* the company as well as the regulatory agency to ensure that compliance is complete, that regulatory capture is not occurring, and to promote those firms exhibiting pro-social behavior (Ayres and Braithwaite, 1991, 1992). In their "empowerment theory of republican tripartism," Ayres and Braithwaite (1991:435) argue that giving public interest groups a place at the regulatory table reduces the likelihood that the industry has too much power over regulators or over other groups—and vice-versa. When the public is invited to participate in regulation (and regulators make efforts to be transparent and provide information to relevant parties), citizens are likely to cooperate and help develop regulations/strategies to promote compliance. When all parties (regulators, industry, and public interest groups) cooperate, they all have an opportunity to voice concerns and guide policymaking efforts—they can create solutions that are more likely to be adopted by the licensees, more likely to be acceptable to the public, and more likely to be enforced by front-line regulatory agents.

Taking a Strengths-Based Approach. A recent addition to the Responsive Regulation paradigm is the concept of a "strengths-based pyramid" to be used alongside the enforcement pyramid. As opposed to punishments, research demonstrates that compliance is predicted by "efficacy-building strategies," such as praise by regulatory agents, trust building, reintegrative shaming, and skill-building for managers and supervisors (Braithwaite et al., 2007:305). In their book *Regulating Aged Care,* Braithwaite et al. (2007:318) promote the use of a "dual pyramids" strategy in which regulators escalate up a pyramid focused on "pick[ing] strengths and expanding them" prior to escalating punishments for noncompliance (via the traditional enforcement pyramid; see also Braithwaite, 2011). With a strengths-based approach, regulators move beyond simply fixing problems and instead reward companies who innovate, problem solve, and continue to improve over time. Such companies often go beyond regulatory requirements (see Berger-Walliser and Shrivastava, 2014; Kolieb, 2015). In the gambling industry, rewards might take the form of (starting from the bottom of the pyramid and escalating rewards) informal praise for innovations and improvements, official and public praise for expanding on those strengths, and access to grant money for continued capacity building. For example, a casino implementing a problem-gambling program could be praised by the regulator during regular inspections. Should the casino expand the program and demonstrate its effectiveness, the regulator could provide the licensee with some form of public recognition such as a letter of commendation on its website. The regulator (should progress continue) could then work with the licensee to find grant money to further expand the program, perhaps to other branches. Finally, the regulator could have some formal recognition or certification of "best practice" adoption (see Ivec and Braithwaite, 2015 for analogous suggestions in the health care domain). Figure 2 provides an example of what a "strengths-based" pyramid might look like for gambling regulators.
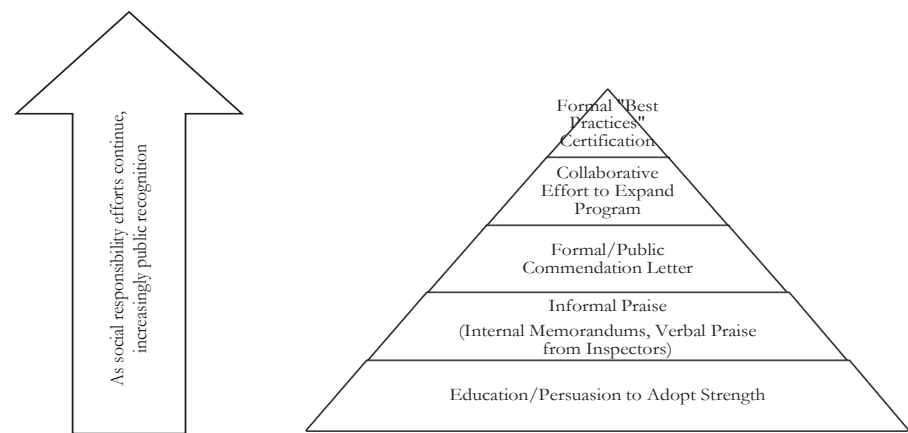
As social responsibility efforts continue, increasingly public recognition

Formal "Best Practices" Certification

Collaborative Effort to Expand Program

Formal/Public Commendation Letter

Informal Praise (Internal Memorandums, Verbal Praise from Inspectors)

Education/Persuasion to Adopt Strength

Figure 2. Example "Strengths-Based" Pyramid for Gambling Regulators

Benefits of Responsive Regulation for the Gambling Industry

The primary benefit of adopting the Responsive approach for gaming regulators is its unique ability to resolve the conflicting objectives of their jobs, described above. However, Responsive Regulation is also notable for its flexibility and for its effectiveness in securing compliance efficiently. These benefits are discussed in turn here.

Reconciling structural contradictions. Responsive Regulation's core strength lies in its ability to reconcile the interests of various parties and, as such, will help regulatory agencies manage competing/conflicting considerations inherent in vice industries (i.e., the structural contradictions discussed above). Furthermore, its hybrid approach (blending self-regulation with government intervention) overcomes inherent weaknesses of some forms of regulation with the strengths of others. The evidence-based strategies promoted in the original 1992 formulation, and the revisions to the approach since then (e.g., integrating ideas of "networked governance", "restorative justice", and the strengths-based pyramid) provide a reasonable system by which regulators can protect the public from unfettered capitalism, but also protect the industry from an overly assertive government.

However, for it to be effective, various stakeholders (e.g., gambling regulators, licensees, consumer protection groups, community groups, financial institutions) should be involved in the regulatory process to ensure that power is balanced and that cooperation does not lead to a negative form of regulatory capture (Grabosky, 1997, 2013; Rorie, 2015; Wright and Head, 2009).[7] With its explicit recommendation to include non-governmental and non-industry stakeholders in regulatory efforts, this approach will also produce more community support for what regulators do. Third party involvement will enhance transparency as well as legitimacy of the agency and the industry.

General, but also situational. A key part of a Responsive Regulation strategy is its emphasis on the general as well as the specific—i.e., it prescribes general industry norms, makes specific recommendations for regulators, and also considers individual actors' motivations in its prescriptions. I am guided by Baldwin and Black (2008:69), who argue:

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7 Not all regulatory capture is bad – when the industry and the public are equally influential on the regulatory agency, the regulator can use the industry's information to better monitor and learn about compliance issues while also engaging with the public to learn about/address their concerns (see Bertels et al., 2014; Reiss, 2012; Thaw, 2014).

"In a really responsive regulatory regime, responsiveness means responding to the operating and cognitive framework of the particular firm or, put in other terms, its own 'attitudinal setting'. This goes beyond the question of how the firm, or different individuals within the firm, interact on a personal level and whether relationships are cooperative or antagonistic, to look at the broader context that shapes the firm's response to the regulatory regime."

Although I agree with Baldwin and Black's emphasis on understanding each firm's unique motivations, it would be impossible for an agency in charge of many licensees to articulate regulatory philosophy on a case-by-case basis—such an endeavor would be burdensome for already-strained agencies and would set regulators up for claims of inconsistent treatment or bias. I argue that Responsive Regulation offers higher-level propositions which serve as a starting point for regulatory agencies, corporate compliance officers, law enforcement, and policymakers to consider when motivating compliance. The strategy essentially prescribes a consistent but flexible approach to enforcement.

In suggesting general strategies yet also thinking about individual regulatory encounters, Responsive Regulation allows for discretion but concomitantly promotes fairness in treatment (Braithwaite, 2002, 2011; Parker and Nielsen, 2011; Parker, 2013). By specifically taking a Responsive Regulation approach, regulators are able to use common criteria for sanctioning criminal offenders—e.g., prior record and offense severity. They are also able to adjust this sanctioning strategy for different situational circumstances as well as over time as needed (Braithwaite, 2002, 2011; see also Kingma, 2008:455), such as when public opinion of the gambling industry changes or the nature of the industry itself changes (see Gainsbury et al., 2013; Loh et al., 2015). Thus, regulators can be lenient when honest mistakes occur, but can be tough when licensees cause social harm on a repeated basis (which likely happens already, but should be explicitly stated to avoid perceptions/claims of unfair enforcement).

In an industry as complex, inter-jurisdictional, and as ever-changing as gambling, regulators must have discretion and flexibility in how they approach each situation and each firm, as well as how they adapt to changes over time (Gainsbury et al., 2013; Gainsbury et al., 2014; Wright and Head, 2009). Responsive Regulation has been shown to be an effective approach in a variety of settings and countries, plus adaptable to unique industry characteristics (Ivec and Braithwaite, 2015; Rorie, 2015). Responsive Regulation is therefore ideal for regulating vice behaviors because of the need to be flexible when unanticipated events or changes in political and cultural norms occur (Loh et al., 2015; Spapens et al., 2015).

More effective. With self-regulation as the norm and cooperation as the initial response to noncompliance, regulators maintain a cooperative (but not weak[8]) stance with relatively minor/infrequent offending. With this, governance is more cost-effective and also more effective in terms of compliance outcomes—when licensees are not putting up defenses against regulators, they will be more likely to provide information, make voluntary disclosures, and be more open to problem-solving and educative approaches (see Baldwin and Black, 2008; Braithwaite, 2002, 2011; Kolieb, 2015). When offending does occur, Responsive Regulation can better help restore violators and help them recover their legitimacy; regulators would not have to be purely punitive, but could also be restorative in their sanctioning mechanism (Bertels et al., 2014).

Something that has not been discussed much with regard to gambling, but which could be especially useful for this "pariah" industry, is the applicability of the

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8 See Hancock (2011), who compellingly argues that the "light touch" version of Responsive Regulation is ineffective for the gambling industry.

"strengths-based" approach put forth by Braithwaite et al. (2007). Responsive Regulation increasingly encourages regulators to focus on the strengths of the regulated community. In doing so, regulators can better encourage/assist with beyond-compliance behaviors and corporate social responsibility efforts. Such efforts will not only prevent offending and encourage better industry-government relations, but will further legitimize the industry (Braithwaite, 2002, 2011; Braithwaite et al., 2007).

Criticisms of Responsive Regulation

Of course, no regulatory strategy is without criticism. Responsive Regulation has been critiqued with regard to: regulatory capture concerns, whether it can be applied in certain industries/settings, whether violators receive consistent/fair treatment, and the ability of front-line regulators to escalate/de-escalate sanctions.

Regulatory capture concerns. A common criticism of Responsive Regulation is the possibility of regulatory capture. By encouraging a cooperative relationship, people fear that regulatory agents and the industry will come to exchange favors in such a way that compliance is undermined (Rorie, 2015). For example, in return for a gambling regulator endorsing lenient responses to offending, a gambling CEO may promise that regulator a lucrative position in her firm upon the regulator's departure from the agency. Perhaps less drastically, other scholars argue that without adversarialism, licensees have no incentive to comply more than superficially (Adams et al., 2009). The Responsive Regulation approach, however, should not be seen as purely cooperative and as promoting a relationship only between the regulators and the regulated entities. As mentioned above, cooperation only occurs initially – when the enforcement pyramid is the formal sanctioning strategy, licensees should be aware that punitive sanctions will be used if noncompliance is detected.

Regarding employment of strengths-based regulatory approaches, the regulator certainly risks looking like an industry promoter when rewarding "socially responsible behaviors"—but that's an inherent risk in all that they do. As stated above, the State needs the regulator to legitimize the industry in order to benefit from it. By making rewards for beyond-compliance behavior transparent to the public and other licensees, regulators will be able to effectively promote corporations who are making efforts to protect consumers and communities without compromising their ability to sanction noncompliance when it occurs. Furthermore, Responsive Regulation calls for third party inclusion to ensure monitoring of the regulator/regulatee relationship.

Not appropriate for large markets. Responsive Regulation has also been criticized as not being appropriate for all settings. Some scholars suggest that the strategy assumes a regulatory situation in which regulators and the regulated have repeated face-to-face interactions between one or a few agents and the same people within the business (Baldwin and Black, 2008; Etienne, 2013; Ford, 2013). In particularly large gambling markets (e.g., Nevada) in which regulators cannot possibly monitor each licensee proactively, it is unlikely that the same regulatory agent will be able to interact with the same compliance managers frequently. Such inconsistency is likely to produce uncertainty and, as such, a cooperative relationship (in which the regulated trusts the regulator not to impose harsh sanctions in the face of initial noncompliance) is unlikely to emerge (Baldwin and Black, 2008; Bisschop, 2014; Etienne, 2013; Ford, 2013; Heimer, 2011; Smith, 2011). It's important to note that such a criticism is not really a failure of the strategy; it is more of a shortcoming of current regulatory environments. Braithwaite makes a strong argument that effective regulation must involve communication and direct, regular contact between agents and the regulated community they oversee (Braithwaite, 2002, 2011; Braithwaite and Hong 2015). In support of this, Rorie et al. (in press) demonstrated that legitimacy and procedural justice considerations motivate

compliance and overcompliance only in such direct interactions. Even in large gambling markets, efforts should be made to increase the contact between the regulator and the regulated. One possibility is to have compliance officers within casinos (those employees responsible for monitoring internal compliance program implementation; Cabot and Preber, 2008) act as "regulatory ambassadors" who check in regularly with regulators (Braithwaite, 2013; Braithwaite and Hong, 2015).[9]

Inconsistent treatment of violators

Responsive Regulation's enforcement pyramid garners criticisms in and of itself. For one, scholars note that it allows for similar behaviors to be handled very differently. A clear prescription of law is that enforcement efforts should employ similar sanctions when responding to similar violations (Parker, 2013; Westerman, 2013). Responsive Regulation argues, instead, that enforcement agents should look at the offenders' motivations and willingness to work with regulators and make changes to come into compliance. Braithwaite (2013) argues that, although strategies to prevent an arbitrary use of power are needed, regulators should be allowed to treat offenders differently *as long as there are clearly articulated reasons for doing so*. If third-party groups were involved in the process and monitoring the regulators, potentially dissimilar responses to similar offenses could be transparently evaluated (Parker, 2013).

Restricted ability to escalate. Finally, regulators are often constrained in how they respond to violations and therefore may not be able to escalate or deescalate sanctions freely up and down the enforcement pyramid (Rorie, 2015). For one, when a particularly harmful or serious violation occurs, regulators may face public pressure to respond harshly (i.e., at the peak of the enforcement pyramid), even if it is the first offense by a licensee (but see Footnote 6). Furthermore, regulatory resource constraints or jurisdictional/relational issues with law enforcement agencies may prevent the escalation of sanctions (Baldwin and Black, 2008; Bisschop, 2014; Rorie and van Wingerde, 2017). Of particular import in the gambling industry, using the enforcement pyramid may be particularly difficult for transnational corporations given the variations in laws and available sanctions from one jurisdiction to the next (Rawlings, 2007). That said, research about applying Responsive Regulation on an international scale abounds. Abbott and Snidal's (2013) recommendations, as one such effort, can inform attempts to implement Responsive Regulation in this increasingly globalized industry.

How has Responsive Regulation been used in the Gambling Industry?

There is little information about whether Responsive Regulation has been applied broadly in the gambling industry. Miers describes the British Gambling Commission's attempts to engage in "better regulation" in the early 2000s – a description that included seemingly responsive behaviors (e.g., providing advice and guidance to most of the regulated community, giving more discretion to regulators; Miers, 2011). In Ivec and Braithwaite's (2015) survey of Responsive Regulation programs worldwide, they found that New Zealand's Department of Internal Affairs (which is responsible for regulating gambling in that country) uses a Responsive Regulation strategy. A post to the World Online Gambling Law Report describes the Malta Gaming Authority's proposed "overhaul", including its intentions to create a

9 A reviewer noted that regulatory agents may see such interactions with the industry as problematic, as they might produce public perceptions of "regulatory capture" and, as such, actually reduce the legitimacy of the agency. This is why public interest groups also need to be involved. In including citizens as well as industry players in regulatory functions, potential claims of "industry capture" are minimized, trust can be built between the industry and the public as well as between the regulators and the public, and the regulators are better able to communicate with licensees about what is expected of them from their local stakeholders (Ayres and Braithwaite, 1991; Rorie, 2015).

"single responsive regulatory framework." (Jongmans, 2015) The Netherlands Gaming Authority explicitly adopted a responsive approach recently, but has not yet fully implemented it.[10] Beyond these isolated descriptions, though, it appears that the vast majority of gambling regulators do not formally identify themselves as "responsive."

Recently, I started collecting data to compare regulatory responses to violations in Nevada and New Jersey (see Rorie, 2017; Rorie and van Wingerde, 2017). Much legal and policy literature conveys an image of restrictive regulation in Atlantic City, where regulators focus primarily on protecting the public and seem to resist promoting the industry. This is in contrast to the literature on Las Vegas regulators, who are portrayed as "hands off" until particularly egregious issues require attention (i.e., taking an "enforced self-regulation" approach similar to what is seen in the Enforcement Pyramid) and are also known for allowing public participation and industry feedback in the rule-making process (Aronovitz, 2002; Becker, 2007; Cabot et al., 2016; Hicks, 1980; Prum and Bybee, 1999). I examined complaints and disposition files available from New Jersey and Nevada regulatory agencies, and found some support for the notion that Nevada takes a hybrid/escalated sanctions approach, whereas New Jersey takes a more punitive/adversarial approach.

Specifically, New Jersey regulators filed formal complaints more often than Nevada regulators—there were 149 complaints in New Jersey from February 2011 to December 2016, compared to 66 complaints in Nevada from March 2009 to August 2016. The data indicated that Nevada regulators had many interactions with the licensees prior to formally filing a complaint, but when they did file a formal complaint they were willing to be quite punitive. Nevada regulators cited licensees for an average of 7.70 violations in each complaint filing (New Jersey averaged 1.09 violations cited per complaint) and fined violators an average of $295,696.84 (compared to New Jersey's average of $17,260.92). Furthermore, Nevada regulators most often cited licensees for violations related to "failure to notify or obtain commission approval" before doing something (37.9% of cases involved this violation, compared to 4.7% of New Jersey cases) and "noncompliance with internal compliance programs" (30.3% of cases)—these violations speak to the importance of self-regulation in Nevada. New Jersey regulators also cited licensees for "noncompliance with internal compliance programs (22.8% of cases), but were more likely than Nevada regulators to sanction licensees for "allowing prohibited individuals access to gambling or alcohol" (29.5% of cases, compared to 6.1% of cases in Nevada) and "violations of advertising regulations" (4.7% of cases, 0.0% in Nevada), implying that they focus heavily on harm prevention (see also Rorie, 2017; Rorie and van Wingerde, 2017).

Such data are notable, among other reasons, because of the success (or lack thereof) of these two markets—Nevada has seen generally increasing gaming revenues since 1984, while New Jersey's market has been stagnant or declining (Cabot et al., 2016; Eadington, 2011; Flanagan et al., 2014; Hicks, 1980; Morse and Goss, 2007; Schwartz, 2017a; Schwartz, 2017b). Some scholars argue that "Nevada's casino-friendly rules appear to have been quite effective at developing a successful model for generating economic benefits from the gaming industry" (Morse and Goss, 2007:114), while others argue that the high level of constraints on Atlantic City casinos stifles innovation in that jurisdiction and makes it unable to compete with emerging gaming industries on the East Coast (Aronovitz, 2002; Cabot et al., 2016; Hicks, 1980). Unfortunately, little data compares consumer harms in these jurisdictions, although one study indicates that problem gambling prevalence among adults does not seem to differ widely between Nevada and New Jersey (2.7% and 2.8%, respectively; Williams et al., 2012).

In essence, I believe that Responsive Regulation would allow regulators to balance their conflicting roles, if adopted authentically—in other words, adoption of a

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10 Personal Communication with Karin van Wingerde, Assistant Professor of Criminology at Erasmus Universiteit-Rotterdam, telephone correspondence (November 2, 2016).

scheme incorporating a) initial cooperation but an escalation of punishments, b) third party involvement, and c) an emphasis on what the industry/licensees are doing "right" instead of a narrow focus on violations. The comparison of Nevada with New Jersey is interesting, but (due to the use of only available government documents) I am unable to say whether Nevada's approach is truly "responsive" in nature and New Jersey's is truly adversarial. It seems likely that regulators use additional, non-public strategies to discipline licensees, such as informal discussions, warning letters, inspection scores, etc. To the extent that regulators use those strategies, I have not captured those in this description.

Conclusion

Ultimately, this article notes that gambling regulators' jobs are subject to conflicting obligations—to both promote and prevent potentially-harmful behaviors. To handle this inherent balancing act, gambling regulators should clearly articulate an evidence-based, theoretically-founded, regulatory strategy that involves third parties and uses an escalated sanctioning approach. Of most import, regulators must recognize that responses to violations are governed by industry efforts as well as the needs, desires, and fears of the population. Regulators would benefit from a "tripartite" effort; they should engage the public and policymakers in a dialogue about how regulators should respond to potentially-harmful industry behaviors. Such considerations include understanding why the jurisdiction legalized gambling, whether regulators are expected to help promote or constrain the industry, and how local residents feel about gambling and its consequences/benefits (Rorie, 2017). As part of such an information-gathering effort, regulators should engage licensees and citizens in a discussion of how to maximize the benefits desired by the state while minimizing the potential burdens on the citizens. By including citizens in the regulatory process, potential claims of "industry capture" are minimized, trust between all parties can be built, and the regulators are better able to communicate with industry participants about what the citizens in their communities want from them (Ayres and Braithwaite, 1991; Rorie, 2015). By bringing industry and the local community together to consult on regulatory policies, such policies are more likely to be accepted by licensees as well as citizens.

Furthermore, regulators can use such meetings to educate licensees about how best to achieve compliance with regulations as well as persuade them to adopt proactive, socially responsible behaviors desired by the public—such behaviors would further legitimize the industry. In contrast, when a licensee does violate regulations, having public participation in the regulatory process can prevent potential concerns about inconsistent treatment of similar violations and enhance the effectiveness of sanctions. Companies, particularly large and visible ones, are often primarily motivated by potential damage to their reputation (Ayres and Braithwaite, 1991; Braithwaite, 1989; Gunningham et al., 2004; Makkai and Braithwaite, 1994).

In sum, by committing to a transparent, responsive approach to regulatory enforcement, gambling regulators can better:

- Cope with the inherent "structural contradictions" of regulating a vice industry while enhancing legitimacy among industry players, the public, and other government representatives

- Demonstrate regulatory flexibility (i.e., responsiveness to context) while also being fair in how they treat violators

- Emphasize the strengths of the industry to motivate beyond-compliance behaviors

- Reduce defiance from industry and enhance better industry-regulatory agency relationships

- Use information gained in cooperation with industry to better monitor industry

- Use punitive sanctions when appropriate

- Enhance transparency and reduce the likelihood of "bad" regulatory capture

- Promote more compliance and deter future misconduct

- Increase cross-jurisdictional consistency in regulatory content

Future Research Needs

Although Responsive Regulation has been empirically supported in myriad industries, it has yet to be studied in the gambling industry. Only one jurisdiction (the Netherlands) has explicitly and transparently adopted Responsive Regulation in practice, although it seems that Nevada informally/privately does so (Rorie and van Wingerde, 2017). Despite the elements of Responsive Regulation being present in regulatory environments, it remains unclear whether such elements are achieving desired outcomes (e.g., licensee compliance with regulations, employee and consumer protection, problem gambling prevention). There are few data collection efforts in this industry testing the effectiveness of any specific regulatory strategies or changes in regulatory strategies (but see Bondolfi et al., 2008; Chambers and Willox, 2009; LaBrie and Shaffer, 2003). As Planzer and Wardle (2012:414) state, there is a "gulf between the 'regulatory' discussion in the scientific literature and the regulatory discussion among politicians, regulators, and lawyers." They describe this "gulf" as reflecting different priorities from the two groups—academics generally want to determine the impact of gambling on the population, while policymakers/practitioners are eager to find out "what works" legislatively to prevent harms while maximizing the economic and social benefits of gambling.

I agree with Planzer and Wardle that this "gulf" is not necessary and further argue that each party working in isolation is doing little to protect the population. Research scholars cannot effectively translate their research into prevention programs without the help of policymakers, and policymakers cannot be effective without measuring the potential and actual impact of regulatory programs using rigorous research methodologies (see Gainsbury et al., 2014). Collaboration between regulators and scholars requires that regulators be willing to collect and share data and hear about the potential harms from gambling, while academics must focus more on providing evidence useful to regulators, not just focusing on the harms from gambling. Only through information sharing and collaboration can we determine the most proportional, efficient, and fair approach to protecting consumers as well as state interests in gambling.

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