Regulating Land-Based Casinos

Policies, Procedures, and Economics

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2

Public Policy and Policy Goals

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Introduction

The seminal gambling-related question any government faces is whether to allow or prohibit it. In non-secular nations or those with a dominant religion that disfavors gambling, this question is easily answered. Several religions condemn gambling, so, not surprisingly, non-secular governments with religious prohibitions against gambling tend to adopt public policies against legal casinos. The religious doctrines of Islam, Hinduism, Buddhism, and Shintoism have affected the gambling laws of most Middle Eastern and Asian countries. This is both understandable and often not retractable.

Once we take religion out of the decision making, the sciences play a major role. Here, gaming industry opponents range from the Right to the Left. For example, Green Party presidential candidate Ralph Nader is alleged to have stated: "No presidential candidate should visit Las Vegas without condemning organized gambling." While gambling debates can have a nonreligious moral underpinning,[1] they more often run to pragmatic amoral pluralist assessments of whether an activity should be legal based on an objective evaluation that considers many principles and effects.[2] Once we debate principles and effects, as Professor Walker ably did in Chapter 1, we have an empirical basis for determining gaming policy on both a macro and micro level. On a macro level, Professor William Eadington suggests that governments considering legal gambling should first weigh benefits—such as taxes, jobs, economic stimulation, and fulfill-

[1] *See, e.g.,* William R. Eadington, "*The Political Economy of the Legal Casino Gaming Industry in the United States,*" Paper 84-1, 18 (1984) (describing the moralist claim that gambling influences the general public's values and priorities). *See also, infra,* text surrounding notes 14-17.

[2] *Id.*

ing consumer demands—against costs—such as economic displacement, effects on crime, and dysfunctional gambling. Governments should next consider reasonable cost-effective methods to minimize the costs. Then, according to Eadington, "If, at that point, aggregate benefits do not exceed aggregate costs, or the proposed gambling industry is not economically viable, then creation of a new gambling industry would not be wise."[3]

Hope, however misplaced, is that the debate over casino legalization centers on reasoned consideration of such costs and benefits rather than hyperbole, which is so common in these campaigns on both sides. But the cost–benefit analysis should not end with the decision to permit legal casinos because it also should shape public policy toward regulating casinos.

Yet most discussions concerning how a jurisdiction considering casinos should regulate that industry start with a question like "Should we adopt the Nevada, New Jersey, or Singapore regulatory model?" This approach is incorrect. It is, however, understandable. Regulators or politicians often talk about the regulation in their jurisdiction as the "gold standard." Defining something assumes only one correct way to do something, and the regulatory method used by one's own government will inevitably seem the best. Confusion on this topic is amplified because most gaming regulatory systems have similar functions—licensing, enforcement, and auditing. These functions, however, have much different utilities depending on public policy.

When a government adopts another government's model, it is likely to be a failure at some level. The most legendary are "implementation failures." As an example, when one small island nation legalized casino gambling, it hired New Jersey gaming counsel to draft its laws and regulation based on the "New Jersey Model." The ensuing laws and regulations closely tracked the New Jersey regulation. The regulatory system imposed, however, made any prospective casino on the island infeasible for several reasons. As one example, New Jersey required full licensing for gaming chip manufacturers. This may have worked for a multi-billion dollar industry in New Jersey, but no chip manufacturer would pay the licensing expense to service a single small casino market. At the time, it was impossible to run a casino without chips. This and many other implementation problems expose governments' different expertise, resources, and circumstances.

The island nation may have felt that the New Jersey system was the "gold standard" because New Jersey's was the strictest regulatory system in the world at the time. Strict regulation for perception purposes may serve the immediate purposes of politicians seeking to assure voters that supposed harms will not result from legalizing gambling. If it means the difference between legal casinos and no casinos, the industry may even embrace it.

[3] William Eadington, *Problem Gambling and Public Policy: Alternatives in Dealing with Problem Gamblers and Commercial Gambling*, in Compulsive Gambling Theory, Research and Practice 175 (Howard Shaffer, Sharon Stein, Blase Gammon, & Thomas Cummings eds., 1989).

However, strict regulation that does not further policy goals is bad regulation as it limits competition, creates unnecessary regulatory costs, and increases pricing. Sometimes this goes unnoticed—particularly where there are regional monopolies—because extraordinary profits mask regulatory impacts on pricing. But once the regional monopoly fades because of new regional competition, the industry can quickly become non-competitive. Whether the "strict" casino regulations from New Jersey's initial launch contributed to its decline as a gaming market has not been fully explored,[4] but some have suggested that "liberalizing" the regulations rendering them more efficient could help keep the market more competitive with new competing markets.[5]

A more fundamental problem than implementation failure exists. Policy failure occurs when the regulations or the implementations of those regulations are inconsistent with the policy goals of the jurisdiction, or the policy goals are unclear, conflicting, or ignored. This may seem simple, but public policy should drive how a government regulates gambling from the adoption of regulations, the organization of a regulatory system, and interaction with the gaming industry in applying the regulations. If the public policy of Nevada is different from the public policy of a new jurisdiction, then—implementation issues aside—why would you consider adopting the "Nevada Model?"[6]

Public policy decisions start with the simple and often unexplored question of why a government regulates casinos. At its heart, gambling is a voluntary contract between parties where money exchanges hands based at least partially on a chance outcome, with one party (usually the casino) typically having a mathematical advantage over the other party (usually the player).[7] The first step in creating public policy toward gambling should start with identifying issues or concerns. In other words, what is it about this gambling contract that causes concerns justifying government inter-

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[4] One study of New Jersey deregulation in 1991 found that removing restrictions on operating hours and limitations on floor space devoted to slot machines had a significant positive impact on casino win. *See* Mark W. Nichols, *The Impact of Deregulation on Casino Win in Atlantic City*, 13 Rev. Indus. Org. 713 (1998); *see also* Richard Thalheimer & Mukhtar M. Ali, *Table Games, Slot Machines and Casino Revenue*, 40 Applied Econ. 2395 (2008); Mark W. Nichols, *Deregulation and Cross-Border Substitution in Iowa's Riverboat Gambling Industry*, 14 J. Gambling Stud. 151 (1998); Jeffrey A. Lowenhar, C.J. Lonoff, & Rita Smith, *Regulatory Requirements and Legalized Casino Gaming in New Jersey: The Case for Change, in* Gambling And Public Policy: International Perspectives 261 (William R. Eadington & Judy A. Cornelius eds., 1991); Philip Satre, *A Report on the Impact of the New Jersey Casino Control Act and Related Regulations on Harrah's Marina Hotel Casino*, 8 Gambling Papers: Proc. Fifth Nat'l Conf. On Gambling & Risk Taking 144 (1981).

[5] Lori Tripoli, *Wasn't the Gaming Law Business Supposed to Be Recession-Proof?*, 13 Gaming L. Rev. & Econ. 23 (2009).

[6] This does not mean that certain aspects of the way Nevada regulates gambling may not be useful as proven practices.

[7] Robert C. Hannum & Anthony N. Cabot, Practical Casino Math (2d ed. 2005).

vention? Only valid concerns should propel governments to treat casino gambling proprietors differently from most other vocations such as flower shop owners or car salesmen. These concerns should be the cornerstones of the course of action governments take in addressing gambling.[8] Overwhelmingly, jurisdictions worldwide have concluded that casino gaming presents unique concerns mandating regulation. Chapter 1 discussed what might make gambling different.

The second step requires that governments select among several possible goals in responding to these concerns. This chapter addresses broader policy goals (e.g., protecting players against unfair or dishonest operators or games) in contrast to specific issues (e.g., assuring the veracity of random number generators in gaming devices). Once determined, these goals should guide the final steps of the process—step three, creation of the regulations[9] and the regulatory framework as covered in Chapter 3; step four, the implementation process as covered in Chapter 3; and step five, the enforcement process as covered in part in Chapters 6, 8 and 14.. The remaining chapters deal with specific areas of regulation that merit special consideration.

The government can enforce regulations against the gaming industry because it has the exclusive power to compel conformity to rules by force.[10] Offering casino gaming without a license in most jurisdictions is a crime that could lead to incarceration. Even after obtaining a license, the regulated casinos are subject to civil and criminal laws.[11] Because the

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[8] This is the essence of public policy, which is the "intentional course of action followed by a government institution or official for resolving an issue of public concern." Clarke E. Cochran et al., American Public Policy: An Introduction 1 (8th ed. 2006).

[9] Regulation is an integral subset of the government's public policy.

"The main textbooks on regulation identify three definitions. In the first, regulation is the promulgation of rules by government accompanied by mechanisms for monitoring and enforcement, usually assumed to be performed through a specialist public agency. In the second, it is any form of direct state intervention in the economy, whatever form that intervention might take. In the third, regulation is all mechanisms of social control or influence affecting all aspects of [behavior] from whatever source, whether they are intentional or not." Julia Black, *Critical Reflections on Regulation*, 27 Australian J. Legal Phil. 1, 11 (2002). Gaming regulation tracks the first more centralized definition as the industry regulated is relatively new and focused on a narrow segment of society.

[10] According to German social theorist, Max Weber, "state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory." Max Weber, *Politics as a Vocation*, *in* From Max Weber: Essays in Sociology 77 (H. H. Gerth & C. Wright Mills eds. & trans., Oxford Univ. Press 1967).

[11] Gaming regulators most often enforce the rules against licensees through civil sanctions including the threat or imposition of fines or license revocation. Violations by non-licensee are often dealt with by criminal sanctions. Criminal law "should be reserved to prohibiting conduct that society believes lacks any social utility, while civil penalties should be used to deter (or "price") many forms of misbehavior (for example, negligence) where the regulated activity has positive social utility but is imposing externalities on others." John C. Coffee, Jr., *Paradigms Lost: The Blurring of the Criminal and Civil Law Models -- and What Can Be Done About It*, 101 Yale L.J. 1875, 1876 (1992).

government backs regulation by the state's exclusive power to use force, the success of a government's public policy can greatly impact a society. What can go wrong? As one scholar noted regarding centralized regulation:

> Its failings are variously identified as including the following: that the instruments used (laws backed by sanctions) are inappropriate and unsophisticated (instrument failure), that government has insufficient knowledge to be able to identify the causes of problems, to design solutions that are appropriate, and to identify non-compliance (information and knowledge failure), that implementation of the regulation is inadequate (implementation failure), and that those being regulated are insufficiently inclined to comply, and those doing the regulating are insufficiently motivated to regulated [*sic*] in the public interest (motivation failure and capture theory).[12]

In casino regulation, failure can be as simple as having licensing standards so high you have few if any qualified applicants.[13]

This chapter concentrates on the design of the public policy goals concerning gambling underlying the regulatory solutions that address identified concerns associated with gambling or the gaming industry. Absent understanding what policy goals the government wants to accomplish, regulators have no context for developing regulations (or making decisions that advance these goals). Implementation failure can occur when, instead of considering a government's policy goals, regulators substitute their own beliefs or assumptions, or those of their perceived constituency, about the policy goals that are supposed to guide their actions both in adopting and applying regulations.

Understanding a government's policy goals is essential to develop an effective regulatory framework. While policy goals that prohibit gambling are self-evident (the prohibition of gambling), goals that permit gambling may take many forms. This chapter details the most common approaches to achieving those goals: market model, player protection, government protection, industry capture, and hybrid model.

Public Policies Prohibiting Gambling and a Gambling Industry

Eradication

Eradication is the most restrictive public policy concerning gambling. A government may have several reasons for wanting to eradicate gambling. While government opposition to gambling may be founded on economic or social thought, the religious orientation of a society is often paramount.[14] Moralists claim that gambling influences the general public's values and

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[12] Black, *supra* note 9, at 3.

[13] As identified in Chapter 15, these barriers to entry can have a substantial impact on the market.

[14] Anthony N. Cabot, Casino Gaming: Policy, Economics, and Regulation (1996).

priorities. In essence, people may interact with others differently in a community with gambling as opposed to a community without it. Gambling's emphasis on hedonism, luck, and wealth may affect the nature of these interactions. Undesirable values in the community at large may emerge, including a belief that persons are better off being lucky than working hard and that wealth is the most important attribute, therefore, everyone must have a price. Moralists believe that underlying some negative attitudes toward gambling is the fear of any activities that are hedonistic and the idea that pleasure for pleasure's sake is wrong or shows deviant behavior.[15] In contrast to the moralist,[16] the pragmatic amoral pluralist assesses whether an activity should be legal based on an objective evaluation that considers many principles and effects.[17]

For whatever reason a government decides that legal gambling is unacceptable, a policy of eradication requires intense regulation of an illegal gaming industry and seeks zero quantity outputs. Here, the legislature adopts comprehensive criminal laws that the criminal justice system must strictly enforce prohibiting all forms of gambling. The policy goals to prohibit all gambling opportunities are not achievable unless a framework exists to detect and prohibit gambling activities. It involves law enforcement mechanisms and court systems that enforce laws severe enough to deter a potential violator from engaging in the activity—usually through incarceration.

To be effective, laws must also be sufficiently precise to identify the prohibited gambling activity, and police and prosecutors must have sufficient resources and motivation to enforce such laws. While seemingly simple, activities that resemble gambling like fantasy sports[18] and pachinko[19] can become major industries by working around imprecise laws. Defining gambling is not simple, and missteps can lead to the creation of an unregulated gaming industry, like the pachinko and slot machine industries in Japan.

Non-enforcement

Non-enforcement occurs when a government's official public policy is to eradicate gambling, but it fails, intentionally or not, to deter the illegal activity. While laws prohibit gambling, police or prosecutors do not enforce

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[15] *See* Vicky Abt, James F. Smith & Eugene M. Christiansen, The Business of Risk: Commercial Gambling in Mainstream America 115 (1985).

[16] Moralists can be either absolute or conservative; the latter allowing for change only within the narrow confines of the body setting the moral code, such as the Church. Jerome H. Skolnick, *Coercion to Virtue: The Enforcement of Morals*, 41 S. Cal. L. Rev. 588, 617–618 (1967).

[17] *See id.* at 618.

[18] Anthony N. Cabot & Louis V. Csoka, *Fantasy Sports: One Form of Mainstream Wagering in the United States*, 40 J. Marshall L. Rev. 1195 (2007).

[19] Erick C. Sibbitt, *Regulating Gambling in the Shadow of the Law: Form and Substance in the Regulation of Japan's Pachinko Industry*, 38 Harv. Int'l. L.J. 568 (1997).

those laws. As one U.S. study concluded: "[t]he meaning of gambling laws and the resulting constraints on gambling behavior are determined less by what legislators write than by how local police and prosecutors carry out their responsibilities."[20]

Non-enforcement occurs most frequently when the attitudes of the state and society, as a whole, differ. Government sets the attitude of the state through the adoption of laws. Popular sentiments define society's conscience as to the propriety of the activity. Usually, the attitudes of the state and society will be in harmony. For example, most people in society believe that a person who robs other people by force should be punished. If the laws and their enforcement attempt to prohibit and punish armed robbery, then the attitudes of the state and society are harmonious.

Perhaps, the greatest difference between the state (laws) and the public conscience in the United States occurred during Prohibition when the government unsuccessfully outlawed the sale of alcohol. Prohibition was a failure. According to one researcher:

Although consumption of alcohol fell at the beginning of Prohibition, it subsequently increased. Alcohol became more dangerous to consume; crime increased and became "organized"; the court and prison systems were stretched to the breaking point; and corruption of public officials was rampant. No measurable gains were made in productivity or reduced absenteeism. Prohibition removed a significant source of tax revenue and greatly increased government spending. It led many drinkers to switch to opium, marijuana, patent medicines, cocaine, and other dangerous substances that they would have been unlikely to encounter in the absence of Prohibition.[21]

Prohibition carried damaging effects far after its demise. It created a national network of organized crime well-financed by enormous alcohol profits.[22]

A more modern and germane example of non-enforcement is sports wagering in the United States. Determining how much is wagered on non-horse sporting events is difficult because virtually all is done illegally, and criminals do not keep open books or pay taxes. When the National Gambling Impact Study Commission (NGISC) issued its Final Report in 1998, its estimate of illegal sports gambling ranged as high as $380 billion annually.[23] More recent estimates for American football placed the Na-

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[20] Nat'l Inst. Law Enforcement & Criminal Justice, D.O.J., NCJ 046259, Gambling Law Enforcement in Major American Cities (1978) [hereinafter, Nat'l Inst.].

[21] Mark Thornton, *Policy Analysis No. 157: Alcohol Prohibition Was a Failure*, Cato Inst., Jul. 17, 1991, http://www.cato.org/publications/policy-analysis/alcohol-prohibition-was-failure.

[22] *Id*.

[23] Nat'l Gambling Impact Study Comm'n, National Gambling Impact Study Commission Final Report 2-14 (1999), *available at* http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html [hereinafter NGISC].

tional Football League at $80–100 billion annually[24] and college football at $60–70 billion.[25] Probably less than 1 percent of all sports wagering on human athletic events is done legally. Nevada's sports books, which are the only ones legal in the nation, saw $3.45 billion wagered in 2012,[26] up from $2.27 billion in 1998,[27] and realized net revenues of $170.1 million, excluding wagering on horseracing.[28]

Despite the staggering amount wagered illegally, the United States has lapsed into a general approach of non-enforcement of sports wagering laws, both at state and federal levels. Law enforcement efforts to deal with illegal sports wagering have declined dramatically in past decades.[29] In 1960, almost 123,000 arrests were made for gambling offenses.[30] By 2012, gambling arrests dipped to less than 8,000.[31] In contrast, the amount of illegally wagered dollars increased dramatically. In 1983, only about $8 billion were wagered on sports in the United States.[32] That amount increased by a multiple of over 25 in the ensuing 30 years.

Many reasons may contribute to this non-enforcement. First, law enforcement has reallocated its limited resources to more serious crimes.[33] Second, federal laws and prosecutorial policies have become increasingly confusing and contradictory.[34] Therefore, prosecutors may be less eager to test the laws for fear of creating bad precedent. Third, the penalties assessed against those who violate sports betting laws are often low and rarely justify the time or expense of law enforcement. Fourth, improvements in

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[24] *Top Sports for Illegal Wagering: NFL Football*, Cnbc.com, http://www.cnbc.com/id/34312813/page/2.

[25] *Top Sports for Illegal Wagering: College Football*, Cnbc.com, http://www.cnbc.com/id/34312813/page/4.

[26] Nev. Gaming Control Bd., Gaming Revenue Report (Dec. 2012), http://gaming.nv.gov/modules/showdocument.aspx?documentid=7618.

[27] Nev. Gaming Control Bd., Gaming Revenue Report (Dec. 1998), http://gaming.nv.gov/modules/showdocument.aspx?documentid=3745.

[28] Nev. Gaming Control Bd., *supra* note 26.

[29] Robert Dorr, *With Police Mostly Sidelined, Sports Bettors Run Up the Score*, Omaha World-Herald, Jan. 31, 1999, at 1a, http://infoweb.newsbank.com.ezproxy.library.unlv.edu/iw-search/we/InfoWeb?p_product=AWNB&p_theme=aggregated5&p_action=doc&p_docid=12DD5BB31D96E3E0&p_docnum=2&p_queryname=1.

[30] Dan McGraw, *The National Bet*, U.S. News & World Rep., Apr. 7, 1997, at 50.

[31] Fed. Bureau of Investigation, *Crime in the U.S. 2012: Table 29*, FBI.gov http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/29tabledatadecpdf. In 2012, the FBI estimated that these were 7,868 gambling arrests in the United States. *Id.* The actual figure for 1994 was 18,500 gambling arrests; it reached 21,000 in 1996, but it has decreased to 9,900 by 2010. In contrast, there were about 1.6 million arrests for drug violations in 2010. C. Puzzanchera & W. Kang, *Easy Access To FBI Arrest Statistics: 1994-2010*, http://www.ojjdp.gov/ojstatbb/ezaucr/ (select "Arrest Statistics" then choose option in "select a time period").

[32] McGraw, *supra* note 30.

[33] Nat'l Inst., *supra* note 20 at 262. Gambling crimes 25 years ago were considered by police to be less serious than prostitution and about on par with after-hours liquor violations.

[34] Nat'l Inst., *supra* note 20; Anthony N. Cabot & Louis V. Csoka, *The Games People Play: Is It Time for a New Legal Approach to Prize Games?*, 4 Nev. L.J. 197 (2004).

technology, such as the rise of the Internet, have made it more difficult to detect and prosecute offenders. Attempting to apprehend and prosecute gambling operators in foreign countries is a challenge.

Fifth, the public does not perceive sports gambling as a serious crime or even a crime at all. In the United States, wagering on fantasy sports is widespread. Office pools on sporting events, such as the NCAA basketball tournament and the NFL Super Bowl, flourish.[35] Governors frequently mark amateur championship games by "friendly" bets between themselves.[36] The media has contributed to the public perception that gambling on sports is an enjoyable and legal pastime. That newspapers post point spreads is just one additional indication that the public enjoys wagering on sporting events. The National Gambling Impact Study Commission in the United States claimed, albeit somewhat incredibly, that because point spreads are available in almost every major US newspaper, many people do not know that sports wagering is illegal.[37] Because most states have laws against sports wagering, law enforcement is placed in the uncomfortable position of enforcing laws unpopular with the public. This is not unique to the United States; gray market casinos openly operate in Tokyo and Taiwan,[38] and unlicensed after-hours mahjong parlors are common in Hong Kong.[39]

This should be a disturbing state of affairs. Citizens can lose respect for government if laws are not popular or enforced,[40] which may create an attitude that not all laws must be taken seriously.[41] Moreover, non-enforcement

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[35] *March Madness: How to Win Your Office Pool*, Fiscal Times, Mar. 14, 2013, http://www.thefiscaltimes.com/Articles/2013/03/14/March-Madness-How-to-Win-Your-Office-Pool.

[36] Victoria Advocate, *Jindal Sends Saints Flag to Indiana Governor*, VictoriaAdvocate.com, Feb. 11, 2010, 4:01 AM, http://www.victoriaadvocate.com/news/2010/feb/11/bc-la-super-bowl-governors-bet/?sports&nfl.

[37] NGISC, *supra* note 23.

[38] *See, e.g., Gambling in Taiwan*, islandside chronicle, Apr. 15, 2013, http://islandside-chronicles.wordpress.com/2013/04/15/gambling-in-taiwan/.

[39] Paul v. Kiatani et al., Presentation at The Second Asia Pac. Conference on Gambling & Commercial Gaming Research: The Third Place: A Sociological Investigation of Quasi-Legitimate Gambling Houses in Hong Kong (2013).

[40] Patricia Helsing, *Gambling—The Issues and Policy Decisions Involved in the Trend Toward Legalization*, *in* Gambling in America: Final Report of the Comm'n on the Review of the Nat'l Policy Toward Gambling 780 (1976).

[41] Once government adopts restrictive laws, repeal often is difficult with a divergence from the public conscience. Often, because of apathy, certain definable groups are under-represented at the polls. Proponents of a position vote and motivate others to vote for that position. Together, they have sufficient political power to convince legislators to adopt a prohibition. After adoption, however, the public may not support the prohibition. This creates disharmony between the attitudes of the state (laws) and the public conscience, which puts the politician in a difficult position. Any movement toward the repeal of the prohibition may incur opposition from the original proponents. Attempting to enforce the prohibition, however, accrues no political benefit as it alienates the politician from the public. This alienation may be beyond any corrupting influence exerted by those conducting illegal activities. The result is an illegal activity readily engaged in by the public without substantial police interference.

may lead the public to believe the police have become corrupt.[42] Although prohibited in its pure form in every state but Nevada, sports wagering is a public preoccupation resulting in mass illegal markets. Criminal operators capitalize by occupying a market forsaken by legitimate operators because of the sports prohibition while simultaneously using unethical means to maintain their businesses. Because of gambling's appeal to a broad sector of the community, protection requires police conspiracy through a system that prevents non-participatory police officers from exposing the conspiracy, thereby stopping the payoffs. Protection also may extend to corruption of politicians to facilitate police cooperation.[43]

Public Policies Permitting a Gambling Industry

The reasons for permitting gambling vary, and distinct public policy categories concerning gambling have emerged that reflect concerns with each reason. The categories are market model, player protection, government protection, industry capture, and hybrid model. Industry capture describes circumstances where industry interests prevail over public policy such that the industry itself controls—at least in part—how it is regulated. The final category, the hybrid model, acknowledges that more than one concern may exist to justify regulating legal gambling and recognizes that competing and complementary policies account for how some jurisdictions regulate the industry.

Market Model Approach

A market model approach envisions a gambling industry with no substantial barriers to entering or leaving the industry, with an abundance of potential competitors, and where both operators and players have perfect information about the pricing of homogeneous gambling offerings. This model should result in perfect competition where pricing results in no profit remaining after subtracting costs, including normal interest on capital, excesses required to cover risk, and managerial salary.[44] This assures a fair price to players in terms of odds and minimum bets. Government intervention into the market is often predicated to address market failure or redistribute wealth.

In many ways, gambling lends itself to a market model. The industry has few natural barriers to entry, such as a natural monopoly, with only some disruptions to a perfect market caused by imperfect information and externalities (negative impacts).

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[42] Nat'l Inst., *supra* note 20.

[43] Peter Reuter, *Police Regulation of Illegal Gambling: Frustrations of Symbolic Enforcement*, 474 Annals Am. Acad. Pol. & Soc. Sci. 36 (1984).

[44] *See, e.g.,* Avinash K. Dixit & Joseph E. Stiglitz, *Monopolistic Competition and Optimum Product Diversity*, 67 Am. Econ. Rev. 297 (1977).

Absence of natural monopoly

First, many casino games are homogeneous public domain games, such as blackjack, baccarat, craps, and roulette. With little cash, a person can operate a gambling game. A pair of dice is all that is needed to offer craps. These games are identical if played in Macau or Las Vegas with rule modifications to change the odds and differing table limits to adjust pricing to the players. The homogenous nature of the gambling product results in minimal barriers to entry.

Two major interventions into the game industry can disrupt the market model: intellectual property rights and regulation. Gambling suppliers can differentiate products—ranging from proprietary table games like Three Card Poker to slot machines—to create artificial demand. While other games or slot machines exist, they are or are perceived to be imperfect substitutes for the new game. When the game's supplier has the right to exclude others from providing the game (perhaps due to trademark or patent protection), the game's provider obtains a monopoly whereby it can influence the market price by altering the rate of production. Because the differentiated product creates a demand over the homogeneous product, the monopoly provider realizes a profit above competitive prices by selling the product above the lowest possible average total cost and producing it at an inefficient output level. For a discussion of the economic impact regulation has on the market model, please refer to Chapter 5.

While artificial monopolies may pose a threat to the market model approach, gambling does not lend itself to one of the more important causes of market failure, a natural monopoly. This occurs when the average cost to a single company continues declining as production increases, such that one company can most efficiently produce the entire demand for the product. Natural monopolies can occur in industries with large fixed costs or where the existence of several large firms would entail the wasteful duplication of a product.[45] Evidence exists that casino gaming is subject to economies of scale in highly competitive gaming markets.[46] This is also consistent with the consolidation of casino properties into a handful of gaming companies in several markets like Las Vegas or Atlantic City. In these markets, the larger casino companies have a price advantage because they can distribute fixed costs such as licensing, legal, accounting, marketing compliance, and some salaries and wages for executives over multiple properties. Some fixed costs may be attributed to general and administra-

[45] George Stigler, *Monopoly*, The Concise Encyclopedia of Economics (David R. Henderson ed., 2d ed. 2007). Some forms of gambling, like online poker, may be natural monopolies because of the desirability of liquidity (large number of players) and the scales of economy that may come from spreading the fixed costs of the poker infrastructure over a large number of players.

[46] *See, e.g.,* Zheng Gu, *Economies of Scale in the Gaming Industry: An Analysis of Casino Operations on the Las Vegas Strip and in Atlantic City*, 9 J. Hospitality & Fin. Mgmt. 1 (2001).

tive cost such as government requirements for non-gaming amenities (e.g., integrated resorts requirements) and regulation (e.g., surveillance, accounting, compliance, and licensing) as opposed to natural market forces (e.g., sales, marketing, purchasing, and training).[47]

Imperfect information

Information also affects whether a market is competitive. Without perfect information, consumers might buy the same goods or services from one supplier at a higher price than they could from another supplier. Information allows consumers to buy identical products at the lowest price and set the competitive price levels. Even when the products are not identical, perfect information allows consumers to make better decisions. Although products in a market are rarely homogeneous, they can be close substitutes. Therefore, consumers must know all facts about the product to make informed choices. Regulation might aid market efficiencies by increasing the supply of information, reducing uncertainties, and better matching supply and demand.

Availability of information in the gaming industry is uneven. Most games are homogeneous products. The fundamentals of craps, blackjack, or any other table game at one casino are usually identical to every other casino. Differences in odds and table limits reflect differences in the price that players must pay to play the game. A game's odds are pricing information. With table games, the odds and table limits are usually known to or ascertainable by the players. Most blackjack players know that using multiple decks increases the house advantage[48] and, therefore, all other rules being equal, a single-deck game is preferable. Literally hundreds of available sources provide detailed statistical breakdowns as to the odds of every casino game based on individual casino rules. If players do not like the game that the casino offers, they can either go elsewhere or not play.

Casinos set prices on games by setting the odds and table limits. Odds variations may be accomplished (i) through rule variations that are more or less favorable to the player or (ii) by altering the payoffs on certain wagers.[49] Regardless of the method, the resulting change in house advantage determines how much it costs a player to play a game. Examples of games in which rule variations can affect the odds are blackjack and craps. In blackjack, a rule requiring the dealer to hit a soft seventeen increases the house advantage 0.2 percent from a table where the dealer must stand on soft seventeen.[50]

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[47] *Id.*

[48] Based on mathematical algorithms applicable to a particular casino game, "[f]rom the caisno's perspective, the house advantage represents how much, in terms of percentage of the money wagered, the casino can expect to retain in the long run." Hannum & Cabot, *supra* note 7, at 19 (2d ed. 2005).

[49] *See generally id.*

[50] The number of decks used, no soft doubling, and no re-splitting of pairs are other ex-

Once the odds on a game are set, the casinos also can impact price by the level of the minimum bet. For example, a minimum wager in Macau may be as high as the equivalent of US$35, while in Las Vegas the same table may have a US$10 minimum bet. All other things being equal such as the number of hands dealt per hour, the pricing would be three-and-a-half times higher in Macau than Las Vegas.

Notable exceptions to the availability of information on pricing in the gaming industry are reel-type and video gaming devices. Players are incapable of figuring out the odds on the device and minimum bet.[51] They must rely on other sources. One source of information is gaming industry advertising (e.g., casinos that advertise the payback on their gaming devices).[52] This could theoretically induce players to patronize the casino with the best odds. Other casino advertising is less helpful, such as claiming their gaming devices are "loose." This implies a high percentage of all coins played are paid back to players. While players may infer the product is offered at a lower price, the advertisement does not provide a means of comparison. It is mere "puffing."

Externalities

Negative externalities—the costs an activity imposes on third parties—is another relevant source of market failure. Externalities often concern the public health or safety. An example of a regulatory agency assigned to mitigate externalities is the Environmental Protection Agency. The perceived externalities of gambling will often shape a jurisdiction's public policy toward gaming. These externalities include lost productivity from

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amples of rule variations in blackjack that affect the overall price of the game to the player. Likewise, the "free odds" bet in craps can vary the price of the game product by the odds that can be taken. A player who bets the pass line and takes single odds is at a 0.85 percent disadvantage, but only a 0.61 percent with double odds, and 0.47 percent with triple odds. This means for every $100 wagered on the pass line with single odds ($50 pass line and $50 odds), on the average, the player will pay a price of about $0.85 while $100 bet on the pass line with triple odds ($25 pass line and $75 odds) will cost about $0.47. A casino allowing triple odds offers a better priced craps game than one that permits only single odds. Some casinos have offered as high as 100X odds; a player taking full 100X odds will face only a 0.02 percent house advantage on the combined pass line (or come) and odds wagers. *See generally id.*

[51] Kurt Eggert, *Truth in Gaming: Toward Consumer Protection in the Gambling Industry*, 63 Md. L. Rev. 217 (2004). Unlike most table games, slot machines possess elements that influence the odds of a particular device that a player would not be able to properly calculate in determining those odds for himself, including random number generators, the casino's ability to alter the probability of certain events occurring, and the likelihood that a particular symbol will stop in a particular spot based on these and other factors. *See id.*

[52] To address the unique nature of gaming devices, minimum regulatory standards for gaming devices are the most common form of price setting in the gaming industry. These are discussed in Chapter 11. The concept of advertising may itself be inconsistent with policy goals espoused by the player protection goals that discourage stimulation of gaming activities.

problem gambling, financial consequences to the player's family, reducing community resources, and stress on community infrastructure (e.g., traffic congestion and police services).[53] Opponents of legalized gambling argue these externalities should lead to a policy of eradication. They claim the availability of convenient gambling increases the incidence of dysfunctional gamblers whose costs to the players or third parties (e.g., family members) are not compensated by the gaming industry.[54] They argue that not all externalities can be attenuated by regulation, and the cost will exceed the benefits that can be derived from legal gaming.

If negative externalities are present and are not internalized by casinos (as part of their costs) or players, the industry will oversupply their specific product (casino games). If the government imposed taxes on casinos to reflect these externality-related costs, the market equilibrium would be a lower quantity (less gambling) at a higher price.[55]

Correcting market failures

Typically, under a market model approach government will intervene into a legal gaming industry where necessary to correct market imperfections. This approach does not reflect a moral or social bias against gambling, nor does it recognize that government has any special obligations to protect the industry.

In a perfectly competitive economy, market forces would determine pricing because the players would have access to all the information necessary to determine the costs of playing and could choose the best price among multiple competitors. Most gaming markets, however, are not perfect and regulators may attempt to ensure fairness by either requiring disclosure of game odds, setting the maximum price a casino can charge players for the gambling experience, or prohibiting games with a high house advantage. Regulations requiring minimum paybacks alone may protect uninformed participants against unexpected outcomes resulting from not having the proper information to judge risk, but these regulations are a poor substitute for actual pricing as the competitive market is more efficient at setting a fair price than regulators.

The market solution to negative externalities is to tax an activity consis-

[53] *See* Douglas M. Walker & A. H. Barnett, *The Social Costs of Gambling: An Economic Perspective*, 15 J. Gambling Stud. 181 (1999).

[54] *See supra* Chapter 1.

[55] In the gaming industry, the pricing of the gaming experience is not as simple as other businesses where the price of the product goes up if the cost of producing the product increases. Casinos provide games for players to play. Casinos make money by winning it from players. The amount won results from the slight advantage the casino has in the odds of the game, which can be as little as about 1 percent in craps and blackjack. To raise prices, the casino must adjust the odds of the games so that it wins more often or more on a given hand. *See generally infra* Chapter 14. As the costs rise, however, demand for the product decreases if demand is price elastic. The higher the regulatory costs, the smaller the casino product market will become.

tent with the cost of the externality and redistribute the taxes to address the costs imposed on third parties or society. As one economist noted:

> A pigovian tax[56] that is equal in size to the negative externalities caused by gambling is found to improve economic welfare. That is, by forcing the market to internalize the harm caused by the industry—typically called the social costs of gambling—both producers and consumers will be forced to pay the full costs of consumption, including those costs borne on the rest of society. Due to the perceived relationship between problem gamblers and external social costs, gambling industries that tend to have higher rates of problem gambling should be taxed at a higher relative rate. However, many casinos are designed to draw patrons from foreign jurisdictions, and therefore would warrant lower pigovian tax rates since the externalities are not incurred by the local economy.[57]

This alone may not reduce problem gambling as government may not redistribute the tax revenue to gambling treatment/prevention programs but may use it for other public goods or services deemed more beneficial. If the tax is variable according to the magnitude of the financial impact of problem gambling, however, the industry may have a financial incentive to reduce problem gambling by adapting internal harm minimization programs to identify and assist problem gamblers through outreach or exclusion.

A pure market model approach to gambling regulation is rare. While some major jurisdictions have been criticized as under-regulated, almost all have some non-market driven regulation such as licensing or technical approvals of gaming devices. A market model approach is more commonly applied to low stakes or charitable gaming. Governments often impose greater restrictions on business activities based not on the activity but on the monetary amounts involved. Government may decide small-stakes gambling is harmless but that players need protection from high-stakes gambling. These governments may apply a market model approach to some forms of low-stakes gambling and a government protection approach to high-stakes gambling, or even ban high-stakes gambling altogether.[58]

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[56] Named after economist Arthur Pigou, a pigovian tax is applied to a market activity that creates externalities that equal the amount of the social cost of the activity. *See generally* A. C. Pigou, The Economics Of Welfare (4th ed. 1960).

[57] Kahlil S. Philander, *A Normative Analysis of Gambling Tax Policy*, 17 UNLV Gaming Res. & Rev. J. 17, 23 (2013).

[58] Charitable gaming is common in many American states and in foreign countries where commercial casino gaming is prohibited. While government may approach licensing of charitable gaming with no more intensity than licensing other businesses; the revenues generated by charitable gaming are often significant. In Minnesota, about $1.1 billion is wagered on pull-tabs each year. Shannon Prather, *Pulltabs, Other Charitable Gambling Up 8.6 Percent Across Minnesota*, Star Tribune, Dec. 9, 2013, 9:16 PM, http://www.startribune.com/local/north/235166491.html. In Mississippi, licenses to conduct low-stakes bingo games are routinely granted with little regulatory scrutiny, while applicants wishing to operate high-stakes games must undergo more rigorous licensing and follow more stringent regulations. *Compare* Charitable Gaming Div., Miss. Gaming Comm'n, §4.1.1,

Figure 2.1

Player Protection Goals

Games are honest
- Verified RNG or random event
- Preventing third party intervention

Games are fair
- Lowest price possible (no special taxation of gambling, low table limits, best odds)
- Reasonable opportunity of winning

Players are secure in their deposits, payments, transfers, and account balances.

No demand stimulation
- No advertising
- Waiting periods
- No entertainment
- No comps

Protected groups
- Age
- Poor

Problem gambling deterrents
- Prohibition against the use of credit
- Operator or player set daily loss limits
- Display of time at play
- No 24/7 gambling
- Maximum or player set playing times
- Advertising restrictions

Player Protection Goals

A player protection approach engineers a legal gambling industry around social and public health issues.[59] The social engineering involves designing a gaming industry that is legal but only meets the unstimulated demand for gambling in a society. The public health concerns dictate that policy goals should include providing maximum protection for players (and those associated with the player) against the negative impact of an activity inherently designed to the economic disadvantage of the player.

Social engineering

The late Reverend Gordon Moody, former Secretary, Churches' Council on Gambling (UK), describes a gaming industry "legalized and arranged for gamblers."[60] Inherent in this approach is that between unlawful gambling and regulated gambling, the latter is preferable as it better ensures player protections. Proponents believe that stimulating the demand for casino gaming is undesirable because it increases social burdens. For example, if encouraged to gamble, the poor may use non-discretionary dollars for gambling instead of for essentials. Either the standard of living goes down, or the government must provide additional services. Policies behind these theories include that casinos should not engage in exploiting players

License Application to Conduct Charitable Bingo (2010), http://www.msgamingcommission.com/images/uploads/cgd_app_charbingolic.pdf. (the Mississippi application for low stakes bingo) and Casino Gaming Miss. Gaming Comm'n, http://www.msgamingcommission.com/index.php/forms_procedures/casino_gaming/ (providing the applications for casino licensure).

[59] David Korn, Roger Gibbins & Jason Azmier, *Framing Public Policy Towards a Public Health Paradigm for Gaming*, 19 J. Gambling. Stud. 235 (2003).

[60] Gordon Moody, *Legalized Gambling: For or Against Gamblers*, 9 Gambling Papers: Proc. Fifth Nat'l Conf. On Gambling & Risk Taking 12 (1981).

by promoting gambling, nor should they encourage players to wager more than they can afford to lose or more than they would if not stimulated to do so. Moody also argued that the government should not take taxes from gambling except as levied on any other transaction and should not permit gambling products that provide the highest return for the operators.[61]

Implementation of these goals often involves prohibitions against the casinos from advertising, offering entertainment, sponsoring junkets, conducting any other activities which might stimulate interest in casino gaming, or having mandatory exclusion of problem gamblers. To assure unstimulated demand, government intentionally adopts gaming regulations that hinder industry growth and strictly enforces those regulations even if it decreases industry revenues.

In Great Britain, where the purest form of this approach was *once* found, an applicant for a casino license had to prove that a substantial unstimulated demand existed for a casino to obtain a license. Unlike other businesses, a successful license applicant could not advertise, offer complimentary services, provide entertainment, or use any other methods to promote the casino or gambling.

Social engineering has among its goals to ensure that the games are honest and fair and that player transactions (deposits, payments, and transfers) and account balances are secure. Honesty refers to whether the casino operator offers games whose determinative outcomes are random. Randomness in gaming is the observed unpredictability and absence of pattern in a set of elements or events that have definite probabilities of occurrence.[62] This could be the shuffle of the cards in blackjack, the roll of the dice in craps, or the random number generator in a slot machine. A slot machine is honest if the outcome of each play is not predetermined or influenced beyond the established house advantage (or player's skill) in the gaming operator's or another player's favor.

A second aspect of honesty is whether forces outside of the established rules of the game influence the outcome. Take, as an example, community poker. The method of shuffling/distributing cards must meet prescribed standards of randomness. But, beyond this, the game must be free of col-

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[61] *Id.*

[62] The concept of random is elusive and its precise meaning has long been debated among experts in the fields of probability, statistics, and the philosophical sciences. Some dictionaries might define random in a more general sense while others will provide a meaning in a more specific statistical sense. *Compare* The American Heritage Dictionary 1025 (2d college ed. 1991) (defining random as "[h]aving no specific pattern or objective; haphazard"), *and* The Concise Oxford Dictionary 1185 (10th ed. 1999) (defining random as "made, done, or happening without . . . conscious decision"), *with* Webster's II New College Dictionary 916 (2001) (defining random as "an event having a relative frequency of occurrence that approaches a stable limit as the number of observations of the event increases to infinity"), *and* The American Heritage Dictionary of the English Language (5th ed. 2013), http://ahdictionary.com/word/search.html?q=random&submit.x=52&submit.y=13 (defining random as "[o]f or relating to an event in which all outcomes are equally likely").

lusion between players and have controls to prevent players from gaining an advantage by having access to other players' hole cards or unexposed cards in the deck.

Fairness deals with whether the operators offer games that give the players a reasonable opportunity of winning. This relates to price setting because game odds and table limits determine the cost to play house banked casino games and rake requirements determine the cost of playing community pooled games like poker.[63]

While a player protection approach focuses on the concerns above, this broad public policy can seek to protect the player (and related parties) from other potential harms. Notable examples include protecting players from risks to player data and privacy and ensuring casino operators timely pay winnings and protect and return player funds on deposit with the casino.

Public health

Public health issues dictate additional goals designed to minimize the impact of problem gambling. These goals have been described as follows:

- Prevent gambling-related problems in individuals and groups at risk of gambling addiction;
- Promote informed and balanced attitudes, behaviors and policies towards gambling and gamblers both by individuals and by communities; and
- Protect vulnerable groups from gambling-related harm.[64]

A more detailed analysis of the impact policy goals have on public health can be found in Chapter 1.

Like all reasoned public polices, a policy statement is a foundational tool. Korea provides an example of a public policy statement centered on player protection. The Korea National Gambling Control Commission (NGCC) adopted the following goal statement to regulate gambling in Korea:

Without appropriate integration, control and supervision, the gaming industry will prevail in the entire society and cause various social pathologies such as gambling addiction, broken families, laxity at work, reckless pursuit of fortune and crimes. The National Gambling Control Commission is taking all possible measures to promote appropriate policies with an aim to prevent such side effects and establish a 'safe and reliable gambling' culture.[65]

Because the state's policy—player protection—is clear, the commission can establish policy goals consistent with this policy.[66]

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[63] *See generally* Hannum & Cabot, *supra* note 7.

[64] Korn, *supra* note 59, at 246.

[65] *Goals of NGCC: Safe & Responsible Gambling*, Nat'l Gambling Control Comm'n, http://ngcc.go.kr/eng/ngcc03.html.

[66] *See Duties of NGCC: Establishing a Healthy Leisure Industry*, Nat'l Gambling Control Comm'n,http://ngcc.go.kr/eng/ngcc04_1.html.

Figure 2.2

Player Protection – Goals, Options, and Implementation		
Policy Goals	**Examples of Regulatory Options**	**Implementation**
Fairness	Minimum payback Testing of equipment Low taxes	Testing Licensing Auditing
Honesty	Equipment testing Oversight of game play	Testing Enforcement
Assuring Payment of Winnings	Minimum reserves/ segregated funds	Auditing
Protected Classes	Prohibiting minors: identification checks Problem gambling exclusion lists Mandated casino training and intervention regarding problem gambling Implementation of tools to identify problem gamblers	Enforcement
Public Education	Problem gambling warnings, responsible gambling awareness	Outreach/Enforcement
Preventing Demand Stimulation	No Advertising No comps No entertainment	Enforcement
Social Impact	Prohibitions against the use of credit Operator or player set daily loss limits Maximum or player set playing times Display of time at play Advertising restrictions	Enforcement
Other protection	Protection of player data and privacy	Enforcement

Government Protection Goals

Like player protection goals, government protection goals can be met through strict regulation of a legal gaming industry. While a player protection approach provides regulation to safeguard the player, a government protection approach supports the government's economic and political interests such as generating new taxes, creating new jobs, revitalizing urban areas or stimulating employment. For example, the public policy toward gambling in Ohio is government protection oriented. Ohio memorialized its interests in the state constitution:

> Casino gaming shall be authorized at four casino facilities (a single casino at a designated location within each of the cities of Cincinnati, Cleveland, and Toledo, and within Franklin County) *to create new funding for cities, counties, public school districts, law enforcement, the horse racing industry and job training for Ohio's workforce.*[67] (Emphasis added.)

[67] Ohio Const. art. XV, § 6 (2014).

Figure 2.3

Tax Rate Examples		
Jurisdiction	Tax Rate	How Derived
Pennsylvania	55%	State Tax (34%), Local Share Assessment (4%), Economic Development and Tourism Fund (5%), Pennsylvania Race Horse Development Fund (approx. 12%)
Macau	38–39%	Gross Gaming Revenue tax (35%), Contribution to the Macao Foundation (1.6%), and contribution to the Infrastructure/Tourism/Social Security Fund (1.4% for one licensee or 2.4% for all others)
Ohio	33%	Gross Gaming Revenues.
South Korea	20%	Gaming Revenues.
Singapore	12–22%	Gross Gaming Revenue generated from premium players tax (5%), Gross Gaming Revenue from other players tax (15%), and Goods and Services Tax on all Gaming Revenue (7%)
Mississippi	12%	State tax (8%), plus up to 4% local tax
New Jersey	9.25%	Gross Revenue tax (8%) and Casino Redevelopment fee (1.25%)
Nevada	7.75%	Gross Revenue tax (6.75%) and miscellaneous tax (1%)

Here, Ohio has not only stated the purpose of casinos is to raise tax revenue and create jobs, but also that it will only allow casinos as an oligopoly. This may be for many reasons, such as limiting the proliferation of gambling or overcoming political opposition to neighborhood gambling. Given the explicit government protection goals listed in the statute, however, a likely reason for this provision is that the state may maximize its gain through collecting some economic rents described later in this chapter.

To some, it is confusing when a government proclaims gambling is a moral and acceptable activity and simultaneously has an extraordinary regulatory apparatus. The regulation required to achieve government protection goals is analogous to the number of restrictions that a bank may put on a business to which it lends money. Although the bank wants to see a business succeed and will help a borrower when it can, its main obligation is protecting its assets consistent with risk. A bank may only require a simple one-page promissory note for a $100 loan. In contrast, loan papers for a $100 million loan will likely be voluminous. The larger the loan, the more concerned the bank will be to protect its interests. Government protection goals and corresponding regulations are more sophisticated where the government relies heavily on the gaming industry to meet tax expectations, provide employment, or stimulate economic growth. Like a bank, one government role is to ensure the government receives its fair monetary return from tax revenues. (Chapter 13 delves into greater detail on the subject of taxes.) Unlike a bank, the government's interest in regulating the gaming industry goes beyond proper accounting controls.

Whether gambling is immoral or produces undesirable social effects is not a direct policy behind a government protection approach. These goals do not seek to minimize negative externalities unless their costs exceed their benefits to the government or are necessary to protect broader governmental or political interests. For example, if voters are inclined to revoke legal gambling (or not reelect a politician) because gambling is impacting the quality of community life, then the government may act to improve community services. Likewise, government will look to curb negative externalities when their costs exceed the benefits of the regulated activity. For example, not preventing a casino from cheating a player may create a short-term benefit (e.g., increased profits resulting in increased tax revenue), but over time the industry will suffer if the public perceives the industry as dishonest. The gaming industry is willing to pay for these regulatory costs because they provide a tangible benefit. When the regulation is more than what the industry requires to capture benefits, however, that willingness vanishes. Likewise, when the cost of treatment related to problem gambling becomes a significant burden to government, it may implement measures to reduce its impact. Under these goals, however, jurisdictions with a predominately tourist base are unlikely to give significant attention to problem gambling because the impact is exported.[68] A more detailed analysis addressing problem gambling can be found in Chapter 10.

Under a government protection approach, a government realizes it has significant economic power because gambling is an industry that was historically illegal. By legalizing gambling, the government has the rare opportunity to seize a large portion of the economic rents by issuing regional monopoly or oligopoly licenses. These artificial quotas allow the government to manipulate prices (or set equilibrium quantities) above (or below) what would be achieved in a competitive market. The licensed operator may capture some of the economic rents while the government may realize others in higher taxes. Some of these economic rents can also be directed toward the development of non-gaming related amenities in integrated resorts, discussed below, that the casino operator might not otherwise provide in a competitive market.

Government protection goals can have a direct economic basis. As Dr. Skolnick noted, Australia was among the first to popularize the Zoning Merit Selection System[69] for the selection of casino operators based on the creation of integrated resorts. The government can use the Zoning Merit Selection System for both social planning and to minimize opposition by setting criteria for size, costs, amenities, and location of the casino. After that, the government could ask for a request for proposals.[70] After receiving proposals, the government can then choose between candidates based on

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[68] Philander, *supra* note 57, at 21.
[69] Jerome H. Skolnick, *A Zoning Merit Model for Casino Gambling*, 474 Annals Am. Acad. Pol. & Soc. Sci. 48 (1984).
[70] *Id.*

experience, project specifications, and other qualifications.[71] The government is effectively a partner to the enterprise and needs to protect both its real and political capital in the success of the project.

The integrated resort model poses two major economic challenges. First, creation of a monopoly or oligopoly to justify the investment and its accompanying higher pricing supports the extraordinary cost of the resort model. This is the antithesis of a player protection model that Reverend Moody described as "legalized and arranged for gamblers" because the economic rents are passed on to the players in higher prices (i.e., worse odds).[72] Second, governments need to be adept in calculating the division of economic rents between it and the selected operators. A government could create a regional monopoly by granting only one or a few licenses with the intent of capturing economic rents associated with monopoly pricing (by way of high taxes) (discussed in Chapter 5). This absolute barrier to entry can create extraordinary profits for the licensee if the government fails to properly assess the market in granting the regional monopoly.

Government protection goals need not have genesis based on acquisition of economic rents where a state has significant reliance on an industry for employment and growth. This can be markedly different from placing quotas on casinos and may be more consistent with market goals. Nevada provides an interesting historical perspective. Nevada has a relatively low gaming tax rate (a maximum of 6.75 percent of gross revenues)[73] and modest government-imposed barriers to entry, so the capture of economic rents based on limiting competition was not its major focus. Between 1931 and 1978, Nevada was the only state with legal casino gaming. Nevada regulated gaming in the late 1950s to keep criminals out of the gaming industry. It feared that the federal government would outlaw casino gaming if organized crime used Nevada-based operations to finance or conceal profits from other illegal activities.[74] Once the threat of direct intervention was minimized, reasons for keeping criminals out of the industry were broadened to help develop the industry.[75] Principally, this concerned broadening the player base and opening financial markets. Increased regulation helped create the perception that criminals were not involved in casino operations and that the games were honest.[76] Keeping the criminal element out

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[71] *Id.*

[72] *See generally* Moody, *supra* note 60.

[73] Nev. Rev. Stat. § 463.370(1) (2013).

[74] Eugene M. Christiansen, *The Role of Government in Commercial Gaming*, 1 Gambling Stud.: Proc. Sixth Nat'l Conf. On Gambling & Risk Taking 128 (1984).

[75] For example, when New Jersey allowed casinos, its purposes for licensing extended beyond those of Nevada. Richard Lehne, Casino Policy 45–46 (1984). Likewise, the public policy of Nevada toward gaming has evolved since 1931, as shown by the additions to its policy statement to include, as example, that casinos do not "unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods," and "that the rights of the creditors of licensees are protected." Nev. Rev. Stat. § 463.0129(1)(b) (1999).

[76] Alfred N. King, *Public Gaming and Public Trust*, 12 Conn. L. Rev. 740 (1980).

Figure 2.4

Government Protection Goals	
Direct Harm	Indirect Harm
Tax and tax evasion	Federal or legislative intervention
Employment	Player rejection of protections
Economic development	Conduct consistent with other government goals
	Money laundering

also helped the government ensure proper accounting for tax revenues.[77] As Nevada showed, the gaming industry faces eradication if the gambling public perceives the industry as dishonest or associated with organized crime. As a growth industry, gaming needs the support of capital markets, such as banks and stock exchanges. Access to these markets is often contingent on favorable perceptions of the gaming industry by these institutions.[78] Under a government protection approach, government attempts to create the characteristics that will encourage the financial market to invest in the gaming industry.

Nevada is brutally honest as to its policy goals, including the statement that "[t]he continued growth and success of gaming is dependent *upon public confidence and trust* that licensed gaming and the manufacture, sale and distribution of gaming devices and associated equipment are conducted honestly and competitively . . . and that gaming is free from criminal and corruptive elements" (emphasis added).[79] While subtle, the statement focuses on public confidence and trust as opposed to assuring the honesty of the games for strict player protection purposes. The best way to assure that the public perceives the games as honest is through regulation mandating the games actually function as such.

But, what happens if things go wrong? Government has several roles in protecting its own interests. The first is as a vehicle for the industry to gain and uphold credibility in order to maintain a vibrant industry that has access to capital, helps fund government and creates jobs.[80] Its existence in many places is tenuous. Governments respond to these external challenges by providing a mechanism to assure a national government, the voting public, actual and potential players, and the financial community that the industry is honest and free of criminals. This mechanism involves licensing and detection and strict discipline of casino operators who tarnish the perception of honesty and freedom from criminal elements. Most casino operators realize this protection is effective only if

77 Richard I. Aaron, *Maintaining Financial Integrity of the Casino Through Licensing Regulation*, 9 Gambling Papers: Proc. Fifth Nat'l Conf. On Gambling & Risk Taking 127 (1982).

78 William R. Eadington, *The Casino Gaming Industry: A Study of Political Economy*, 474 Annals Am. Acad. Pol. & Soc. Sci. 23, 25 (1984).

79 Nev. Rev. Stat. § 463.0129(1)(b) (2013).

80 Another goal that often accompanies the protection of the industry is the protection of the state's principal interest in tax revenues. Stringent accounting, auditing, and reporting requirements accomplish this.

provided by government. Convincing others that the industry is honest and free of criminals by self-regulation is difficult, if not impossible. Therefore, most operators are willing to subject themselves to losses of freedoms, risk, and expense as the price of maintaining the desired public perception. Often, this price is high. To achieve the desired results, governments create a burdensome licensing process, costly accounting and reporting systems, and disciplinary procedures that could cause severe fines or license revocation.

Government's second role is to protect its own financial interests. Because the primary gambling benefit is often tax revenues, a government must provide such accounting controls and audit functions as it deems reasonable to ensure it receives its fixed share. This requires a much greater focus on accounting regulations, including internal controls and audit functions, than given under the player protection approach. Where the benefits are ancillary (such as employment), government checks ensure that casinos comply with all legislative mandates for protecting jobs through regulatory actions such as imposing a receivership rather than closing a non-compliant casino.

A third role is to promote and defend the gaming industry. This requires the government to take an active interest in convincing the outside world the regulatory system has successfully excluded organized crime and is protecting the honesty of the games. When attacked, the government typically defends the industry against its critics.

Government's fourth role is to provide a vehicle for solving the industry's problems. For example, no single casino may be capable of testing equipment or games sold by distributors to assure they cannot be manipulated or cheated to the casino's detriment. Equipping and maintaining a lab and employing trained personnel would be too costly for one casino. Therefore, government, through collective funding from casino taxes, may finance and operate a games laboratory to provide this function.[81] Expert law enforcement also may be available to detect and apprehend criminals who cheat the casinos. This requires employing agents trained in cheating detection and special laws to address the peculiarities of the gaming industry.

Another role for government involvement is to keep the gaming industry from interfering with paramount government goals. For example, the government may be more interested in preventing the gaming industry from becoming a conduit for money laundering because its cost to society may be higher than any benefit the gaming industry may realize from not having to police cash transactions.

[81] As an alternative, the private sector could provide these same functions. In fact, several private gaming laboratories will review and certify gaming equipment. Government roles in these circumstances are to assure that the laboratories are competent and perform the certifications to government standards.

Industry Capture/Influence

The quote "what is good for Ford is good for America" was attributed to American industrialist Henry Ford, the founder of Ford Motors.[82] What is advantageous regulation for casino owners, however, is not necessarily good regulation. Corporations control most casinos and have a principal responsibility to derive profit for their shareholders. While many casino companies undertake actions that contribute to a competitive economy, are fair to the players, and are socially responsible, including the minimization of problem gambling, governments should not expect this to be the norm.

Government should create regulation designed to direct casino behavior in a way that is consistent with public policy. This does not mean, however, that the industry cannot benefit from player or government protection goals. When considering some government protection goals, such as maximizing employment, the interests of government and the industry are often congruent. Even when the goals are different, the regulatory solution could be the same, benefiting the government, the players, and the industry. For example, government may police and arrest people who cheat in the casino. Arresting cheaters benefits players by preventing theft, benefits the industry by protecting casino revenues, and benefits the government by ensuring revenues are collected and taxes are maximized.

Other times, however, the regulated industry influences the regulatory process solely for its own profit maximizing goals. Regulatory capture is often associated with the teachings of George Stigler. He postulated that "as a [general] rule . . . regulation is acquired by the industry and is designed and operated primarily for its benefit."[83] This acquisition, argues Stigler, comes about because the industry can use the regulatory machinery to (1) acquire cash subsidies, (2) limit entry, (3) gain control over complements and substitutes, and (4) help in price-fixing schemes.[84]

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[82] *Quotes By and About Henry Ford*, ABELARD.ORG, Feb. 14, 2014, http://www.abelard.org/ford/ford4_quotes.php.

[83] George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 3 (1971). Others liken regulatory agencies to stages of life. Gestation is when the agency is born of sincere belief that issues of public importance exist that can be managed by regulation. In its youth, the agency is exuberant but vulnerable and inexperienced and can be manipulated by the regulated. As support for the agency fades from the public conscience, it enters the maturing stage where "[r]egulation becomes more expert and settled, but as the agency moves out of the …mainstream it begins to pay increasing attention to the needs of industry." ROBERT BALDWIN, MARTIN CAVE & MARTIN LODGE, UNDERSTANDING REGULATION: THEORY, STRATEGY, AND PRACTICE 47 (2d ed. 2012); In its mature stage, a regulatory agency becomes "more concerned with the general health of the industry and tries to prevent changes which adversely affect it. Cut off from the mainstream of political life, the commission's standards…are determined in…light of the desires of the industry affected." MARVER H. BERNSTEIN, REGULATING BUSINESS BY INDEPENDENT COMMISSION 87 (1955).

[84] GEORGE J. STIGLER, THE CITIZEN AND THE STATE: ESSAYS ON REGULATION, 116 (1975). The acquisition of cash subsidies, Stigler's first reason for industry to demand regulation,

Economist Sam Peltzman, expounding on the works of Stigler, theorized that while the regulated will attempt to influence the regulatory process, no single economic interest could capture a regulatory body.[85] Peltzman proposed that a regulatory equilibrium exists where politicians act to maximize political returns. In other words, elected politicians follow a course of action that most likely ensures their reelection. When faced with regulating an industry, politicians will balance the benefits and costs to the regulated, the public, and other interest groups to maximize chance of reelection.[86]

Interest analysis assumes that interest groups or their members influence the course of regulation to their economic favor.[87] A major determinate of whether an interest group's influence affects regulation is the extent of the influence that can be exercised and is exercised by each interested party. The intensity and strength of an interest group determine the balance of political power on a subject.[88] Professor Louis Jaffe noted that "[t]he elements of this political process are common to all potential lawmaking activity—the intensity of a given problem, the degree to which it is felt throughout an organized and stable constituency, and the representation (or lack thereof) of varying interests within and without the lawmaking body."[89] An interest group tends not to have intense feelings about a subject where it is only marginally, or not at all, affected by the outcome. This is because the transaction cost of influencing the outcome exceeds the benefit from the result.[90]

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is tenuous because it would tend to excite entry by new firms. Cash subsidies would only be sought by an industry having control over entry or if the subsidies could be earmarked for existing firms. Although Stigler appears to come to this realization in *The Citizen and the State*, his same general argument holds for his contention that an industry demands regulation to control complements and substitutes, and to assist in price-fixing schemes.

[85] *See* Sam Peltzman, *The Economic Theory of Regulation After a Decade of Deregulation*, 1989 Brookings Papers On Econ. Activity (Special Issue) 1 (1989).

[86] For an excellent discussion on the government role in a political-economic decision game, see Grossman's and Helpman's work related to free-trade agreements which can be extended to other areas, such as regulations. Gene M. Grossman & Elhanan Helpman, *The Politics of Free-Trade Agreements*, 85 Am. Econ. Rev. 667 (1995).

[87] During the constitutional debate, the anti-federalists adopted Madisonian or republican concepts. They urged decentralized government where citizen participation could involve the concepts of public virtues necessary to overcome faction politics. Interest group theory is grounded in the pluralist concept. Here, the discrete factions dictate political outcomes through promoting their self-interest. Cass R. Sunstein, *Interest Groups in American Public Law*, 38 Stan L. Rev. 29, 32–33 (1985). Federalists, however, did not espouse the pluralist concept. They, like the anti-federalists, did not accept that interest group politics would result in compromise that would promote the public good. Instead, they envisioned a large republic with checks and balances to control the self-interested representation. *Id.* at 39, 43–44.

[88] Henry H. Perritt, Jr., *Negotiated Rulemaking Before Federal Agencies: Evaluation of Recommendations by the Administrative Conference of the United States*, 74 Geo. L.J. 1625, 1640 (1986).

[89] Louis L. Jaffe, *The Illusion of the Ideal Administration*, 86 Harv. L. Rev. 1183, 1188 (1973).

[90] Robert A. Dahl, A Preface To Democratic Theory, 48–50 (1956).

If the public, as the consumer, lacks sophistication or information, they are unlikely to be organized or have collective abilities to assert political power. Consumers tend to be unsophisticated unless an issue becomes salient in their lives. Where the public is not the consumer, its interest is not the cost of the product but rather receiving a share of the wealth through taxing the industry.

Interest groups have greater interest in issues that affect their well-being. Peltzman's research into congressional behavior suggests that the higher the economic stakes, the more likely legislators will do the bidding of constituents. In typical situations, this explanation is better for legislative or regulatory behavior. Ideology prevails over constituency preference only in areas of morality not involving economic stakes, such as abortion and school prayer[91]

Several primary factors determine the power of an interested party to assert influence over the regulatory process. First is the strength of the regulated occupation. In jurisdictions where gaming affects the economy, the industry has greater ability to hold political power. Beyond influencing voters by political contributions or direct appeal, members and groups in a large gaming industry have the resources to hire lobbyists, create and fund cohesive trade associations, and mobilize.

Second is the strength of competing interested parties. This competition may occur in two ways. One competition is between groups attempting to use regulation to transfer wealth and groups wanting regulation for social gains. Interest groups will attempt to increase their power on given issues by forming alliances with other interest groups. This is often a battle between consumers who want regulation only to cure market imperfections and other interested parties who want to create inefficiencies to acquire wealth from the consumer. Competition may also exist between groups attempting to use regulation to transfer wealth for their own benefits. Here, the fight is to gain the largest benefit from the inefficiencies and the transfer of excess wealth from the consumer.

The third determinant factor is whether the jurisdiction has a competitive political party system. Jurisdictions not dominated by a sole political party tend to be less influenced by a single interest group. While reviews of congressional voting behavior show direct influence of interest groups, this influence is less important than party membership and political ideology.[92]

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[91] Sam Peltzman, *Constituent Interest and Congressional Voting*, 27 J.L. & Econ. 181, 184, 210 (1984).

[92] However, there is evidence that other patterns of voting behavior can be observed. The spread of gambling across the country is likely to create a large constituency (more employees, etc.) which can change voting patterns in Congress. It is analogous to the protection of the textile industry compared to the leather industry. For example, one commentator notes that "a geographically dispersed industry can obtain the support of a larger number of elected representatives than a regionally centralized one." Robert E. Baldwin, *The Political Economy of Trade Policy*, J. Econ. Persp., Fall 1989, at 119, 122.

Because the gaming industry has such a large stake in regulation, it often devotes significant resources toward influencing the regulatory process. Therefore, besides a consistent focus on policy goals, a regulatory system should have safeguards to prevent interest-group influences (as discussed in Chapter 7). Such safeguards range from the obvious (prohibiting regulators from being compensated by the regulated) to the subtle (ensuring input from all interest groups on regulatory changes). Moreover, in jurisdictions where casino tax revenues from the gaming industry are important, stronger methods to ensure against "capture" are often necessary.[93]

Hybrid Goals

Sometimes intentionally but often haphazardly, a hybrid goals approach borrows elements of the market model, and player and government protection goals. Colorado's declaration of public policy incorporates a unique blend of government protection and player protection approaches with a vague reference to providing for the concerns of a market model approach. Specifically, the Colorado General Assembly has declared the following:

> The success of limited gaming is dependent upon public confidence and trust that licensed limited gaming is conducted honestly and competitively; that the rights of the creditors of licensees are protected; and that gaming is free from criminal and corruptive elements; . . . All [gaming] establishments . . . must therefore be licensed, controlled, and assisted to protect the public health, safety, good order, and the general welfare of the inhabitants of the state to foster the stability and success of limited gaming and to preserve the economy and policies of free competition of the state of Colorado.[94]

Government protection goals are implied in Colorado's desire "to preserve the economy" of the state and ensure the "success of limited gaming" through promoting public perception.[95] Player protection goals can be seen in the Assembly's directive that establishments be controlled to protect public health and welfare. The desire that gaming be free of criminal and corruptive elements could support either type of goal. Finally, un-

[93] That is not to say, however, that capture is inevitable simply because a particular jurisdiction heavily relies on tax revenue from a particular industry. When the National Commission of the Study of Gambling reviewed the Nevada regulatory system, it did so with a critical eye. Because tax revenues from gambling made up about half of the State budget, the Commission was influenced by the perception that the State regulators might concede to every request of the industry. The Commission found otherwise. "Serious questions arise as to whether a State that relies so heavily on a single industry for its revenue needs is truly capable of regulating that industry properly." The Commission concluded, "The Nevada control structures have stood the tests of time and, often, bitter experience. . . ." Robert D. Faiss & Gregory R. Gemignani, *Nevada Gaming Licensing: Qualifications, Standards, and Procedures, in* Frontiers in Chance: Gaming Research Across the Disciplines 126, 131 (David G. Schwartz ed., 2013), http://gamingpress.unlv.edu/pdfs/chap9.pdf.

[94] Colo. Rev. Stat. §12-47.1-102 (2014).

[95] *See id.*

dertones of a market model approach are contained in the references to gaming being conducted competitively and the preservation of the state's free competition policy.

Unfortunately, the vagueness and ambiguity in this example show just why defining public policy is so important. In Colorado, is government protection supposed to yield to player protection? Should public confidence be valued higher than free competition? It is unclear.

In comparison, the Pennsylvania General Assembly provided this guidance when establishing its hybrid goals: "[t]he primary objective of this part to which all other objectives and purposes are secondary is to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful."[96] Pennsylvania makes apparent that its leading goal is protecting players and the community, but to realize just how absurd this goal is, consider that Pennsylvania taxes gaming at 55 percent for gross slot machine revenue and 16 percent for table games revenue. By doing so, Pennsylvania garnered gaming tax revenues of $1.456 billion in 2011.[97] It also created regional monopolies for licensees. Where exactly does Pennsylvania think these revenues come from? Would a government, for example, pronounce a policy to permit only two stores in a country to sell televisions and then do a Request for Proposals to award these exclusive rights? If it did, what would a retailer pay to have monopoly rights to sell televisions in Philadelphia, and what would that do to the price of televisions? But Pennsylvania does this with gambling and at the expense of the players who have a much worse chance of actually emerging from the casino as winners. Why? Because in large part the government can reap the economic rents that come from granting regional monopolies so they can charge extremely high tax rates. Pennsylvania public policy is not and never was based on protecting the public but rather on exploiting the public through the state's monopoly powers to permit gambling, access an enormous tax, and grant exclusive franchises.

New Jersey provides an example of contradictory polices played out to their natural conclusion. New Jersey wanted gaming to regenerate an urban area, Atlantic City, by increasing tourism, stimulating construction, providing new jobs, and generating additional tax revenues.[98] These common policy goals are typical of government protection goals. Had this been the government's only set of goals, casino gaming might have had a different history in New Jersey. At the time of legalization, however, another set of policy considerations were adopted. In particular, New Jersey decided that the government had a duty to protect players from exploitation by prevent-

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[96] 4 Pa. Cons. Stat. § 1102 (2014).

[97] Melissa Daniels, *PA Gambling Tax Revenue Highest in the Country*, Pennsylvania Indep., June 1, 2012, http://Paindependent.Com/2012/06/Pa-Gambling-Tax-Revenue-Highest-In-The-Country/.

[98] R. Benjamin Cohen, *The New Jersey Casino Control Act: Creation of a Regulatory System*, 6 Seton Hall Legis. J. 1, 3 (1982).

ing casinos from stimulating demand for the casino product. The unison of these two policies was based on the idea that gambling is not an end, but a means, to fulfill worthwhile goals.[99] The reality of the New Jersey gaming experiment was that the government was uneasy and hostile to the gaming industry, but it accepted the industry with the view it could achieve the worthwhile goals, minimize social and governmental costs, and be strictly controlled.

New Jersey officials were trying to serve two masters with contradictory policy goals. What emerged through the political process was a compromise on virtually every aspect of casino operations. Instead of a defined public policy and quantifiable policy goals, vague ambitions resulted in laws not designed to meet either goal. Instead of either allowing credit or not, the government allowed unlimited credit but required casinos to deposit the instrument promptly. This frustrated player protection goals because players could play on credit, and it frustrated government protection goals because the credit terms in Atlantic City were less favorable to the players than its competition, resulting in lost business. Similarly, instead of banning or permitting advertising, New Jersey came up with rules allowing casinos to advertise the casinos themselves, but not their odds, while requiring the slogan "Bet with your head, not over it."[100] The message was confusing.

Not all hybrid goals are blatantly contradictory. Some can attempt to apply different policies to distinct persons based on geography. Puerto Rico, for example, allows casinos to stimulate demand through advertising outside Puerto Rico but not within the Commonwealth.[101] Other jurisdictions allow casinos to pursue nonresidents, but prohibit their own population from engaging in gaming. These countries might adopt a market model or government protection goals as applied to nonresidents and a policy of eradication or player protection as it concerns its own residents.

Nevada also has an interesting blend of policies. In 1977, Nevada adopted a public policy that while clearly based on government protection policies also introduced the goals of maintaining a competitive economy. This policy reads "All establishments where gaming is conducted and where gaming devices are operated . . . must therefore be licensed, controlled and assisted . . . to preserve the competitive economy and policies of free competition of the State of Nevada."[102] This was less problematic than Pennsylvania as Nevada then had no contradictory policies limiting the number or physical requirements for casinos, limited licensing expense

[99] Bruce Ransom, *Public Policy and Gambling in New Jersey, in* GAMBLING AND PUBLIC POLICY: INTERNATIONAL PERSPECTIVES 155, 159 (William R. Eadington & Judy A. Cornelius eds., 1991).
[100] Davis & Gilbert LLP, *Gambling with New Jersey's Casino Advertising Rules: A Bad Bet*, Mar. 2014, http://www.dglaw.com/images_user/newsalerts/Advertising_Gambling_With_New_Jersey_Casino_Advertising_Rules.pdf.
[101] *See Posades de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986).
[102] NEV. REV. STAT. § 463.0129(1)(d) (2013).

and had a very low tax rate (5.5 percent). As the Nevada industry matured, however, the barriers to entry increased, including integrated resort requirements for new casinos and costly and lengthy licensing investigations. This historical evolution makes consistent adherence to different policy goals problematic.

Another more nuanced approach is to apply different goals to distinct behavior. This occurs where the government wants the benefits of casino gambling but feels that gambling may have negative consequences to certain classes of its citizens. If, for example, Pennsylvania acknowledged that the costs of problem gambling were unacceptably high to a small segment of the players, it could declare that the major purpose of legalized gambling, as in Ohio, is to create tax revenues but with a narrower exception to protect a vulnerable subset of the population. A theoretical approach defines the costs and benefits of various types of activities, such as credit, advertising, and alcohol consumption. It is best to look for less burdensome alternatives when the costs associated with the creation of externalities exceed the benefits. If alternatives are available that produce greater benefits than costs, choose one that maximizes the benefits to cost ratio. If none exist, then the activity can be prohibited.

A hybrid approach can attempt to reconcile any number of individual public policies. Careful consideration must be given as to whether the policies conflict or complement one another. If the policy goals conflict and are not prioritized, then regulators have no guidance in implementation of the regulations or laws. As New Jersey discovered, a hybrid approach that seeks to appease too many interests or concerns may fail to resolve any at all.

Summary

Public policy guides, or should guide, a government's regulatory decisions. Critically important to effective regulation is that a government's public policy toward gambling be clearly communicated. Without such statement, a government's intention to achieve government protection goals such as maximizing tax revenues may be subsumed by regulators' preference for player protection. Even worse, ambiguity in public policy could provide the gaming industry with an avenue for regulatory capture by allowing the industry to persuade regulators that their interests are the interests of the government. And even where the public policy is explicitly stated but encapsulates a hybrid approach, the statement must be clear enough to provide regulators with priorities when policies conflict.

What is a reasoned approach for government to undertake? First, the government needs to study the gaming industry, and if it decides to permit it, to understand its benefits and problems. Government needs to be as smart as the industry it intends to regulate (avoiding information and knowledge failure). Second, government needs to define policy goals that are appropriate to what it hopes to accomplish through regulation (avoiding instrument failure). Third, it needs to design regulations and regulatory systems that are sophisticated given the unique expertise, structure and capabilities of the government (avoiding implementation failure). Fourth, government must have the expertise, training and motivation to properly regulate (avoiding motivation failure and regulatory capture). Many factors threaten to derail a jurisdiction's creation of an effective gaming regulatory structure. Sadly, most governments get caught in these pitfalls, with their failures masked by an enormously profitable industry.

APPENDIX[103]

Figure 2.5

Public Policy Statements

	Government Protection	Player Protection	Hybrid
Colorado			X
Indiana	X		
Iowa		X (but a tax rate over 20%)	
Louisiana			X
Maryland	X		
Massachusetts			X
Michigan			X
Nevada	X (strong market leanings)		
New Jersey			X
Ohio	X		
Pennsylvania			X
South Dakota			X
Washington		X	
Tribal Lands	X		
Australia		X (but only one integrated resort in each state)	
Singapore		X (but only two integrated resorts)	
Korea		X (but a 20% tax rate)	
Macao			X (limited licenses but many sublicenses and stronger market leanings)
Malta		X	
South Africa			X

[103] Not all jurisdictions have explicit policy statements. Of those that do, not all are contained in legislative declarations. The categorizations collected in this table represent statements found in state constitutions, legislative declarations, and regulatory mission statements/goal statements. Where policy statements were available from more than one source in a given jurisdiction, only the statement form the highest authority was considered. Moreover, while this book focuses on casino-related issues, it is uncommon for policy statements to be similarly narrow in scope. Accordingly, these categorizations should be viewed as describing a jurisdiction's policy toward gaming generally. This list categorizes only a small sample of jurisdictions permitting gambling and is not meant to be exhaustive. Finally, while various Native American tribes may establish independent public policies towards gambling, this categorization reflects the policy goals established in the Indian Gaming Regulatory Act, the mission statement of the National Indian Gaming Commission.