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Simon Planzer

# Empirical Views on European Gambling Law and Addiction

 Springer

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# Foreword

## Science, Public Policy and Law: Considering the Case of Gambling

### *Empirical Views on European Gambling Law and Addiction*

Planzer's *Empirical Views on European Gambling Law and Addiction* addresses an important and too often ignored area of study: the intersection of science and law. Gambling, like drugs, holds the potential to adversely influence the public health and welfare. Gambling can affect personal and community activities in both favorable and unfavorable ways. The policies that government, industry, and other stakeholders employ to minimize the adverse consequences and maximize the benefits of gambling are many and diverse. At some point, every member of a community experiences the consequences of public policy and how legislators, lawyers, and judges operationalize these policies into law. This is certainly true for gamblers. However, few people have been sufficiently brave to confront the law directly by challenging how well it advances the public policy goals that guided its original development and purpose.

Policies represent broad grassroots movements or leader-based initiatives that often reflect sociocultural values; laws are legally enforceable rules that often reflect the expression of policies. Policies must observe and obey laws. Policy movements often lead to changes in the law (e.g., civil rights). In this sense, policies are the landscape against which legal architecture develops and evolves. Public policies and the laws associated with such policies hold the promise, if not the obligation, to advance and protect the public health and welfare. Unfortunately, the vast majority of policies and laws are generated in the absence of guiding scientific evidence that can inform stakeholders about the efficacy of the law. This is particularly evident in the area of gambling. For example, jurisdictions that permit gambling increasingly require the purveyors of gambling to develop and offer responsible gaming programs

(e.g., self-exclusion) although the evidence providing support for these programs is mixed.<sup>1</sup>

Increasingly, policy makers, lawmakers, clinicians, and members of the public alike have been demanding more evidence-based practices. Despite this current fascination with evidence-based practice, the relationship between science and the practice of promulgating both policy and law is a curious one. Like their clinician counterparts, the makers of public policy and law tend to trust their instincts more than scientific evidence. Consider clinicians:

The majority of therapists believe that the way to be a good therapist is to do everything you do intuitively... They do it by the 'seat of their pants'... The same group of people, however, says that the ultimate goal of therapy is for people to have conscious understanding – insight into their own problems. So therapists are a group of people who do what they do without knowing how it works and at the same time believe that the way to really get somewhere in life is to consciously know how things work!<sup>2</sup>

Similarly, for example, in the UK, stakeholders have long debated immigration policy. Recently, they have recognized the need for improved evidence as they continue this debate. Critics have noted that there are “data gaps and limitations; analysis gaps and limitations; and uncertainties in the conclusions emerging from the available analysis.”<sup>3</sup> These fundamental concerns about the quality of information suggest, perhaps, that like the conduct of therapy, the UK immigration policy debate has been guided more by ‘seat of the pants’ instinct than by scientific evidence.

In this book, Planzer argues that science and scientific evidence represent fundamental bedfellows that must replace – or at the very least inform – instinct and personal values. Planzer suggests that science can help to guide the development and implementation of public policy through the application of case law. He shows that scientific evidence has direct relevance for legal considerations. Planzer shows that scientific evidence is more than something just nice to have; it is essential for policy makers, lawyers, and lawmakers – and everyone who interprets the law. This is a bold, courageous, and comprehensive undertaking. The implications of his effort are many.

Despite his primary focus on gambling, Planzer’s argument about the essential value of science for the law and lawmaking also applies to other areas of human conduct. Gambling, like so many other complicated patterns of human activity, tends to encourage the emergence of conventional wisdoms. Consider the case of alcohol prohibition in the US and its presumed effects and unintended consequences on public

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<sup>1</sup>LaBrie, R.A., Nelson, S.E., LaPlante, D.A., et al. (2007). Missouri casino self-excluders: Distributions across time and space. *Journal of Gambling Studies*, 23(2), 231–243; Nelson, S.E., Kleschinsky, J.H., LaBrie, R.A., et al. (2010). One decade of self-exclusion: Missouri casino self-excluders four to ten years after enrollment. *Journal of Gambling Studies*, 26(1), 129–144.

<sup>2</sup>Bandler, R., & Grinder, J. (1979). *Frogs into princes: Neuro linguistic programming*. Moab: Real People Press, p. 6.

<sup>3</sup>The Migration Observatory (2011). *Top Ten Problems in the Evidence Base for Public Debate and Policy-Making on Immigration in the UK* (pp. 1–15): University of Oxford.

health.<sup>4</sup> Personal belief systems sometimes rest upon logical expectations and, perhaps, even a kernel of evidence, but, more often, these traditional beliefs are derived from personal bias, anecdote, and folklore. These synergistic influences provide the ingredients necessary for the emergence and easy acceptance of moral judgments that can compromise rigorous inquiry. In many instances, the implicit acceptance of moral judgments can prevent lawyers and scientists alike from testing their assumptions about topics of interest. Some of these conventional ideas – regardless of evidence – have garnered sufficient strength to influence the development and application of public policy. For example, as with drug, alcohol, and driving under the influence (DUI) policies,<sup>5</sup> evidence for effective gambling policy is rare. What makes it so difficult to develop a scientific foundation for developing public policies for gambling?

It is not simple or straightforward to advocate for science-guided public policy – whether gambling-related or otherwise. Policy makers and scientists conceptualize issues very differently. They have different languages, goals, and styles. These differences reflect a wide range of values. For example, policy makers seek relatively immediate, tangible solutions that will endure. Scientists seek advances of almost any size that can move current understanding to a more advanced level. Policy makers seek certainty; scientists value doubt. Policy makers see evidence as concrete and enduring; scientists see evidence as constructed and temporary. Planzer's *Empirical Views on European Gambling Law and Addiction* seeks to bridge these two perspectives and the unique vocabularies common to each.

It is easy to see that policy makers, lawmakers, and scientists consider and apply evidence in very different ways. Further complicating this situation, scientists are more comfortable than lawmakers living in the gray area, marked with uncertainty and doubt. Judges in particular face the difficulty of being obligated to make decisions by applying the law; they cannot enjoy the privilege of the gray area. In turn, scientific doubt gives rise to fresh research questions and new ways to answer them. Lawyers as well as law and policy makers need a system for determining the strength of evidence. For example, scientists are used to evaluating research designs for what these strategies can and cannot accomplish. Cross-sectional studies, for example, cannot inform stakeholders about the incidence (i.e., new cases) of disease or the duration of illness. To gather meaningful evidence about incidence and duration – and therefore the impact of social events – we need prospective longitudinal studies. Unfortunately, these studies take time – often more time than policy makers, lawyers, and judges have available to make their decisions.

Muddling matters, scientists – often in need of research funding – are too willing to enable public policy makers' need for certainty and evidence of any type. Seeking funds more than truth, investigators misguidedly suggest that alternatives to prospective longitudinal research can answer questions about, for example,

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<sup>4</sup>Blocker, J.S. Jr. (2006). Did prohibition really work? Alcohol prohibition as a public health innovation. *American Journal of Public Health*, 96(2), 233–243.

<sup>5</sup>E.g., Strang, J., Babor, T., Caulkins, J., et al. (2012). Drug policy and the public good: Evidence for effective interventions. *Lancet*, 379(9810), 71–83.

gambling impact. Policy makers frequently choose the seemingly least expensive alternative (e.g., cross-sectional research design) as a way of providing at least some kind of evidence that will fulfill a legal mandate; the result of this situation is that both policy makers and scientists have limited insight into the very nature and course of gambling-related disorders. Policy makers proudly announce that they are going to fund innovative and comprehensive research; in their quests to garner grant support for their project, scientists offer simple, less expensive, but incorrect designs for the questions of importance. The result of this choreography between funders, scientists, and limited resources is that stakeholders often choose the wrong design and everyone ends up with the same old research, leaving policy makers and the public with the same old questions. This pseudoscience political dance produces a black eye for both scientists and public policy makers alike.

Planzer reminds us that the legal world risks problems – similar to those confronted by science – when it applies the law without examining the evidence that supports the assumptions upon which the law rests. Lawmakers and judges alike can advance the application of law by maintaining a more critical, perhaps even scientific attitude toward their personal beliefs and how these might influence the law.

Planzer's *Empirical Views on European Gambling Law and Addiction* encourages us to take pause and reconsider the relationship between science and law, as well as between the scientist and the lawmaker. This is a rare opportunity indeed that will rattle convention to its core. It offers a vision for a different kind of public policy, informed by a novel kind of science. Planzer's view encourages a new era of cooperation among lawmakers, scientists, and gambling industry executives. To advance an evidence-based system for promulgating gambling-related policy, everyone involved in the manufacture of science and policy will have to agree on target benchmarks and objectives that we can measure and evaluate.<sup>6</sup> The typical tactics used by vested ideological, political, financial, and emotional interests to attack science and limit evidence-based policy (e.g., economic manipulation, delay, hiding identities) will require careful management.<sup>7</sup> Planzer deftly demonstrates that using science can change the gambling playing field as well as how the games are played. No longer can we simply accept gambling policy and law at face value; now is the time to use science to challenge assumptions and assure that we establish and interpret the law in ways consistent with the best available evidence.

For example, many years ago, my colleagues and I described the fundamental elements of Responsible Gambling programs.<sup>8</sup> Now it is time to evaluate the prevalence and efficacy of these suggestions to determine their value to the public health and welfare. Too often jurisdictions and companies call for features of a responsible gambling program that have yet to demonstrate benefit, especially in

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<sup>6</sup>E.g., Bogenschneider, K., & Corbett, T. (2010). *Evidence-based policymaking: Insights from policy-minded researchers and research-minded policymakers*. New York: Routledge.

<sup>7</sup>Rosenstock, L., & Lee, L.J. (2002). Attacks on science: The risks to evidence-based policy. *American Journal of Public Health, 92*(1), 14–18.

<sup>8</sup>Blaszczynski, A., Ladouceur, R., & Shaffer, H.J. (2004). A science-based framework for responsible gambling: The Reno model. *Journal of Gambling Studies, 20*(3), 301–317.

consideration of associated costs and burdens.<sup>9</sup> Today we see a similar situation as the European Union debates policies designed to minimize harm related to Internet gambling despite having limited evidence about the extent of gambling-related problems and the determinants responsible for these difficulties.<sup>10</sup>

Ultimately, Planzer's book encourages the development of science-minded policy makers and policy-minded scientists<sup>11</sup> who are willing to fly less by the 'seat of their pants' and more by using the guidance that science can provide to help establish the questions of importance and the methods by which we can evaluate them. Unfortunately, the genie is out of the bottle: gambling has expanded worldwide, law and policy makers are trying to catch up, and scientists are lagging behind policy makers. Planzer's work inspires a different strategy. The question now is whether policy makers, lawyers, judges, and scientists will have the mettle and determination to follow his lead.

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June 17, 2013

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<sup>9</sup>E.g., Gostin, L.O. (2000). Public health law in a new century. Part III: Public health regulation: A systematic evaluation. *Journal of the American Medical Association*, 283(23), 3118–3122.

<sup>10</sup>Planzer, S., Gray, H.M., & Shaffer, H.J. (2014). Associations between national gambling policies and disordered gambling prevalence rates within Europe. *International Journal of Law and Psychiatry*, 37(2), advance online publication 23 December 2013.

<sup>11</sup>Bogenschneider, K., & Corbett, T. (2010). *Evidence-based policymaking: Insights from policy-minded researchers and research-minded policymakers*. New York: Routledge.



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Why gambling? During my trainee clerkship at the EFTA Court, two gambling cases were pending before that court. Gambling comes with a number of highly interesting questions. The more I immersed myself in the topic, I came to realise that the legal questions I wished to address could only find satisfying answers if informed by empirical research. The chosen empirical perspective on gambling law made for a luscious research recipe. Why gambling? That is why.

Pursuing research at the intersection of normative law and empirical sciences was intellectually challenging and enriching at once. On this path, I was fortunate to enjoy the company of brilliant scholars and colleagues. Their support assured that the outcome of the long-lasting research did not become a gamble.

My first ‘thank you’ goes to my dissertation supervisors, Professor Carl Baudenbacher and Professor Urs Gasser. I thank them for their helpful guidance and for giving me the opportunity to write on a highly fascinating topic from an angle of my preference. Working with EFTA Court President Baudenbacher for several years enhanced my understanding of European economic law and the larger context in which it takes place. I thank Professor Urs Gasser and Professor John Palfrey for their support at Harvard Law School.

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Writing the present book required endurance: I say thanks to my highly esteemed friends and family for simply being the great and reliable persons they are.

Finally, my thoughts are with two dear personalities. One did not get to see this book, but her legacy will always be inspiring for me. And the other proved to be an invaluable pool of infinite patience and support; I owe her *tusind tak!*

August 2013

Simon Planzer

### *State of Research*

*The book considers law and literature up to 1 August 2013. Unless otherwise specified, electronic resources were last visited on that date.*

# Contents

<b>1</b>	<b>Introduction</b> .....	1
1.1	Gambling: A Reality of Life .....	1
1.2	Overview .....	6
<b>Part I Gambling in the EU: Legal Framework</b>		
<b>2</b>	<b>National Gambling Regulation: National, International and European Constraints</b> .....	11
2.1	Sectorial Quasi-Exemption or Liberalisation? .....	11
2.2	Constraints Under National Law.....	12
2.3	Constraints Under Public International Law.....	14
2.4	Interplay of EU Law and National Gambling Regulation.....	14
<b>3</b>	<b>The General Law on EU Fundamental Freedoms and the Conditions of Their Restrictions</b> .....	17
3.1	Fundamental Freedoms .....	17
3.2	Justification Grounds.....	18
3.2.1	Derogations in the Treaties .....	18
3.2.2	Derogations in the Case Law.....	19
3.2.3	Differences Between the Two Tracks .....	21
3.3	Proportionality.....	23
3.4	Margin of Appreciation .....	26
3.4.1	Notion and Origin.....	27
3.4.2	Relationship Between Margin of Appreciation and Principle of Subsidiarity .....	29
3.4.3	Relationship Between Margin of Appreciation, Judicial Scrutiny and Principle of Proportionality .....	29
3.4.4	Raison d'être.....	31

3.4.5	Commonalities and Differences Between the Court of Justice of the EU and the European Court of Human Rights.....	32
3.5	Results.....	36
<b>4</b>	<b>Further Relevant Provisions for EU Gambling Law</b> .....	<b>39</b>
4.1	Primary Law.....	39
4.1.1	Escape Gates.....	40
4.1.2	Competition and State Aid.....	40
4.1.3	Non-Discrimination.....	43
4.1.4	Fundamental Rights.....	43
4.2	Secondary Law.....	44
4.2.1	Information Society Directive.....	44
4.2.2	Distance Selling Directive.....	45
4.2.3	Anti-Money Laundering Directive.....	46
4.2.4	Data Protection Directive and Directive on Privacy and Electronic Communication.....	47
4.2.5	Unfair Commercial Practices Directive.....	47
4.2.6	VAT Directive.....	48
4.2.7	Audio Visual Media Services Directive and Television Without Frontiers Directive.....	49
4.2.8	E-Commerce Directive.....	49
4.2.9	Services Directive.....	50
4.3	Results.....	51
<b>5</b>	<b>Results of Part I</b> .....	<b>53</b>
<b>Part II Analysis of the EU Gambling Case Law</b>		
<b>6</b>	<b>Scope of Application in EU Gambling Law</b> .....	<b>57</b>
<b>7</b>	<b>Justification Grounds in EU Gambling Law</b> .....	<b>63</b>
7.1	Consumer Protection and Public Order.....	63
7.2	Ambivalent Relationship of the State Towards Gambling.....	67
7.3	Gambling Addiction: A Case for Public Morality or Science?.....	73
7.4	Results.....	81
<b>8</b>	<b>The Use of the Margin of Appreciation in EU Gambling Law</b> .....	<b>83</b>
8.1	Reasons for Taking a Comparative Look at the European Court of Human Rights.....	83
8.2	How to Steer the Margin of Appreciation: General Principles.....	84
8.2.1	General Considerations.....	84
8.2.2	The Role of the Motivation of the Decision.....	86

8.2.3	The Importance of the Convention Right .....	86
8.2.4	The Nature of the Justification Ground .....	87
8.3	How to Steer the Margin of Appreciation: Criteria in Relation to Crime, Health and Public Morality .....	88
8.3.1	Crime .....	88
8.3.2	Health .....	92
8.3.3	Public Morality .....	101
8.4	Summarising the Principles and Criteria and Double-Checking Them in Gambling Cases Before the European Court of Human Rights .....	105
8.4.1	General Principles .....	106
8.4.2	Criteria Regarding Crime, Health and Public Morality.....	106
8.4.3	Double-Checking the Principles and Criteria in Gambling Cases.....	108
8.5	The Margin of Appreciation in the Gambling Case Law of the Court of Justice of the EU.....	109
8.5.1	Early Case Law: Unlimited Margin of Appreciation.....	110
8.5.2	Gambelli and Lindman: Limitation of the Margin of Appreciation .....	112
8.5.3	Subsequent Case Law: A Mixed Picture .....	114
8.5.4	EFTA Court .....	115
8.5.5	Principles and Criteria from the European Court of Human Rights Applied to the Gambling Case Law of the Court of Justice of the EU .....	118
<b>9</b>	<b>Proportionality Review in EU Gambling Law .....</b>	<b>123</b>
9.1	Gambling Addiction: An Introduction into Nature and Mechanisms.....	123
9.1.1	A Peculiar Nature? .....	124
9.1.2	Notion and Epidemiology.....	125
9.1.3	Commonalities Between Gambling Disorder and Other Expressions of Addiction.....	133
9.1.4	Shared Development of Addiction.....	149
9.1.5	Addiction as Syndrome .....	154
9.1.6	Results .....	155
9.2	Empirical Views on the Proportionality Review of the Court of Justice of the EU.....	157
9.2.1	Definition of Protection Level and Choice of Regulatory Model.....	157
9.2.2	Exclusive Right Model versus Licensing Model.....	158
9.2.3	Channelling: A Scientific Term?.....	164
9.2.4	Detrimental Nature of Competition.....	166
9.2.5	Consistent and Systematic Policy: Controlled Expansion and Advertising .....	170
9.2.6	Slot Machines .....	186

9.2.7	Internet Gambling .....	190
9.2.8	Mutual Recognition.....	202
9.2.9	Illicit Penalties.....	207
9.2.10	Licensing Tenders: Procedure and Requirements .....	208
9.2.11	Results.....	213
9.3	The Peculiar Approach in the Review Practice of the Court of Justice of the EU .....	217
9.3.1	Cases with Similar Consumer Protection Concerns.....	218
9.3.2	Causes: Political Considerations and Moral Views on Gambling.....	223
9.3.3	Consequences: Lack of Science-Informed Approach and Judicial Vacuum.....	233
9.3.4	Results.....	249
<b>10</b>	<b>Excursus: Precautionary Principle in EU Gambling Law .....</b>	<b>253</b>
10.1	Notion, Genesis and Scope of Application .....	253
10.1.1	Notion.....	253
10.1.2	Genesis .....	254
10.1.3	Scope of Application .....	257
10.2	Precautionary Principle in Gambling Law: Application, Rationale and Criteria.....	257
10.2.1	Current Application in Gambling Case Law.....	257
10.2.2	Criteria.....	259
10.3	Marginalisation of the Role of Empirical Evidence in the Gambling Case Law.....	263
<b>11</b>	<b>Excursus: EU Fundamental Rights in EU Gambling Law .....</b>	<b>267</b>
11.1	Development of Fundamental Rights in Case Law .....	267
11.2	Drafting of the Charter of Fundamental Rights of the EU.....	272
11.3	EU Fundamental Rights in Gambling Law.....	274
11.3.1	Applicable Rights.....	274
11.3.2	Level of Protection and Interpretation .....	279
11.3.3	Relationship Between EU Fundamental Rights and EU Fundamental Freedoms .....	281
11.4	Scope of Application After the Treaty of Lisbon? .....	285
11.5	Results.....	287
<b>12</b>	<b>Epilogue .....</b>	<b>289</b>

<b>Bibliography</b> .....	295
Books and Edited Books .....	295
Book Sections .....	300
Articles .....	304
Reports .....	315
Conference Papers.....	316
Media .....	316
Miscellaneous .....	317
Case Law of the Court of Justice .....	318
Case Law of the General Court.....	322
Case Law of the EFTA Court.....	322
Case Law of the European Court of Human Rights and the European Commission of Human Rights.....	323
Case Law of National Courts .....	324
EU/EEA Primary Law .....	325
EU Secondary Law .....	325
EU Soft Law .....	326
International and National Law & Materials .....	327
<b>About the Author</b> .....	329
<b>Index</b> .....	331



# Abbreviations

AB	Appellate Body (WTO)
AIDS	Acquired Immune Deficiency Syndrome
Art./Arts	Article(s)
ATF	Arrêts du Tribunal fédéral
BGE	Entscheidungen des Schweizerischen Bundesgerichts
CEN	European Committee for Standardization
Cf.	Confer
Chap./chaps.	Chapter(s)
CJEU	Court of Justice of the European Union ('the Court of Justice'; 'the Court')
DG	Directorate General
DSM	Diagnostic and Statistical Manual of Mental Disorders
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
Ed./eds.	Editor(s)/edition(s)
EEA	European Economic Area
EFTA	European Free Trade Association
<i>E.g.</i>	<i>Exempli gratia</i>
ESA	EFTA Surveillance Authority
<i>Et seq.</i>	<i>Et sequetur</i>
EU	European Union
European High Courts	CJEU, EFTA Court and ECtHR
Fig.	Figure
Fn/fns	footnote(s)
GATS	General Agreement on Trade in Services
HIV	Human Immunodeficiency Virus
<i>Ibid.</i>	<i>Ibidem</i>
ICD	International Statistical Classification of Diseases and Related Health Problems
<i>I.e.</i>	<i>Id est</i>

<i>If.</i>	<i>In fine</i>
<i>I.i.</i>	<i>In initio</i>
Internal Market Courts	CJEU and EFTA Court
No	Number
P./PP.	Page(s)
Para./paras	Paragraph(s)
PMU	Groupement d'Intérêt Economique Pari Mutuel Urbain
SARS	Severe Acute Respiratory Syndrome
Sect./sects.	Section(s)
SR	Systematische Rechtssammlung
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom of Great Britain and Northern Ireland
US	Unites States of America
WHO	World Health Organization
WTO	World Trade Organization

# List of Figures

Fig. 9.1	Life-time prevalence of gambling disorder in the US.....	131
Fig. 9.2	Triad model of disease transmission .....	134
Fig. 9.3	Addiction syndrome .....	155
Fig. 9.4	Exposure and adaptation .....	179



# List of Table

Table 9.1	Diagnostic criteria of alcohol use disorder, tobacco use disorder, and gambling disorder according to DSM-5.....	136
-----------	--	-----