The 'Public Accountability Approach': Suggestions for a Framework to Characterise, Compare, Inform and Evaluate Gambling Regulation

Jennifer Borrell

Abstract It is argued that the analytical comparison of gambling regulatory frameworks across jurisdictions requires the identification of salient dimensions to provide the basis for such. It is further suggested that governmental 'conflict of interest' might provide a useful dimension for such comparison, as operationalised by concomitant EGM harm and government dependence criteria. The same 'conflict of interest' criteria are then suggested as a guide for gambling regulation within single jurisdictions, this being named the 'Public Accountability Approach.' These points are discussed within broader reference to lines and webs of harm production within a public health analysis. Broader reference is also made to the proper role of government within contemporary democracy.

Keywords Gambling regulation · EGM · Conflict of interest · Public health · Precautionary principle · Accountability

Introduction: From Comparing Gambling Regulation *across* Jurisdictions to a Guide for such *within* Jurisdictions

I started out to solve the problem of characterising and comparing gambling regulatory regimes across different jurisdictions in a relatively short discussion, having collected a mass of detailed information on such over time, particularly as part of a consultancy project on EGM technology and legislation. This article follows the trajectory of my reasoning in reflection on this problem, ending up in quite a different place from where it started. It is hoped that the patience of readers is not over taxed, having been thus 'forewarned.' To ease

J. Borrell (✉)
Borderlands Cooperative, Melbourne, Australia
e-mail: j.borrell@optusnet.com.au

J. Borrell
Victoria University, Melbourne, Australia

the 'journey' I will lay out the basic structure of the arguments here. Firstly it was determined that the mere collation of information about the different regulatory regimes (particularly as pertaining to EGMs) would not suffice and some criteria was required to sort and order the enormous amount of detail available. Also, it was contended that government statements and declarations of values, aims and missions could not provide a stable basis for comparison, not only because of the many different ways that the same terminology is used but also because such cannot be taken to translate into implementation of policy in a straightforward manner. While recourse to some literature on the general principles and aims on which gambling regulation is built was useful, it did not provide the detail necessary to guide comparisons or even offer a meaningful analytical overview of what is 'happening' with regulation in the different regimes. Hence I determined that some point of focus was required to 'take a punt' at comparing different regulatory regimes for the purpose of description and analysis—and that this should be directed at the most salient factors, as may be offered by what we expect from government regulation in general and what we know about the gambling industry in particular. The point of focus I thence arrived at was 'conflict of interest,' given our current knowledge of EGM-generated harm and the dependence of many governments on this type of revenue—specifically: '*How exactly does the regulatory framework deal with (actual and potential) governmental conflict of interest between the aims of revenue optimisation and representation of the public interest in terms of health and well-being?*' To assist with the analysis, I thought that this 'conflict of interest' might be best *operationalised* through the *combination* of three types of measure: (1) the percentage of (regular) users of the EGM product who have problems with their gambling, (2) the percentage of EGM revenue drawn from 'problem gamblers'; and (3) government dependence on EGM revenue in total and in proportion to all other forms of revenue.

My thinking was that gambling regulatory regimes (with particular reference to EGM gambling) might be compared *firstly* by a description of the operational and administrative processes and structures for dealing with *conflicts of interest* (or the functions of revenue protection and citizen protection) and *secondly,* with information about the magnitude of the problem and the effectiveness of the regulation according to the operationalisation of *conflict of interest* as proposed above. Unfortunately, I was unable to venture a preliminary utilisation of '*conflict of interest*' criteria for comparing gambling regulatory frameworks as was originally intended, due to the lack of space in this relatively short discussion.

Having arrived thus far, it occurred to me that this operationalisation of *conflict of interest* might provide a useful guide for gambling regulatory frameworks *within* single jurisdictions, especially for the setting of goals and for the ongoing measurement of effectiveness. I, perhaps grandiosely, call this the '*Public Accountability Approach,*' hoping that, 'parcelled' in this way other researchers and policy analysts might 'take up the baton' and use it as a basis for discussion about the various regulatory frameworks and, perhaps, theory development at some level. What I most definitely do not suggest is that this *Approach* should form the beginning and the end of gambling regulation—only that it might provide a guide as to effectiveness and, importantly, *accountability* in relation to a prime point of harm production and governmental responsibility. I 'nestle' this idea in the context of a broader public health approach, which I favour (and which is discussed in more depth elsewhere)—noting that while aetiology or causation of harm production is complex, it is necessary to identify 'lines of perpetration' if we are to be optimally effective in harm prevention. Thus the '*Public Accountability Approach*' seeks to focus attention on a key point in harm perpetration (i.e. as pertaining to EGM design and supply), without delineating the means by which this harm should be prevented or even describing the full

range of measures that might be supported and enacted in the process of health and well-being optimisation even while such might be implicit in parts of the discussion.

Frameworks for Examining and Characterising Gambling Policy

Analytical Overviews of Gambling Regulation

This section explores some frameworks by which to characterise and examine gambling policy. To begin with, there are surprisingly few in-depth international comparisons of gambling regulation in the academic literature, especially given the body of work on new forms of gambling and their effect on people and communities, along with the concomitant community concern and political sensitivity. Nevertheless, substantial material exists about regulation within *single jurisdictions*, for example with government positions and aims being outlined (often in considerable detail) on various government websites or in critiques pointing to inequities that disadvantage gamblers and/or segments of the population. There are also some useful and informative accounts of what gambling policy and regulation is trying to achieve with varying prioritisation. For example:

- Probity and fairness in the conducting of business
- Keeping out criminal elements and activities
- Stable revenue base; general economic benefit
- Minimisation of social harm; assistance to problem gamblers

Few would take issue with any of these general aims; however, the 'devil may be in the detail' of these policies and in the often wily journey from policy to implementation (especially in the varying weights given to different policy objectives), a point that will be elaborated on briefly, later in this discussion.

There is also the ubiquitous dichotomy of laissez faire/free market-based regulation versus gambling prohibition—which does not seem to advance us very far as both positions in pure and simple form are rather marginal in mainstream debate. From an industry standpoint, some regulation is preferable, not least because this very often delivers to them lucrative monopolies (or an EGM operation duopoly in the case of Victoria, Australia), but also because of the legitimacy that ensues and the stability provided for businesses, markets and investors. Even apparent 'prohibitionists' are in most cases only advocating a moratorium or ban on certain gambling products shown to be harmful for a large proportion of gamblers (usually Electronic Gaming Machines or 'EGMs')—not a prohibition on gambling per se.

Bostock (2005) improves on this simple dichotomy a little with '*five distinct policy options, each taking a relative place in a spectrum of protective/ support for the individual and society,*' though he does note that '*a blending of options often exists and that gambling policy is an evolutionary process, like other areas of public policy.*' Between the extreme prohibition and laissez faire options he places:

1. 'The Monaco option': banning own citizens while permitting outsiders. (Author's note: This depicts Australia's approach to internet gambling and also a traditional European approach to casinos);
2. 'The Buthelezi option': direction of gambling tax revenue from 'the haves' to 'the have nots,' akin to the more interventionist and re-distributionist European welfare states. (Author's note: this is aligned with the strategy of high entrance fees for entering

casinos to disbar locals on a low income. To work it would have to be contextualised by a progressive taxation regime in the jurisdiction); and

3. Reforms directed at caps on machines, community and gambler education, access to gambling forms and access to ready cash ('the Tasmanian Green Youth Network/New Zealand Gambling workshop option'). (Author's note: these are the types of options being adopted in most jurisdictions that have allowed a rapid expansion of gambling industries since the early 1990s).

While the latter is the most common avenue for gambling regulation, identifying this is merely the *beginning* of the task at hand—to provide a preliminary framework by which to characterise and compare gambling regulatory regimes across different jurisdictions i.e. what sort of dimensions would best inform such an analytical framework? Considerations of salience go to the heart of this question, specifically the dimensions that are of most direct relevance for characterising and comparing gambling regulatory regimes.

Problems with Using Government Descriptions of Policy and Regulation for Purposes of Comparison

Overall, it would seem that the task of comparing international gambling regulation is rather fraught and difficult, not least due to the amount of material that is apparently in need of collating, sorting through and prioritising—but also because documentation of generally agreed upon criteria for doing such is scarce. If we were to take a strictly empirical approach—piling up information about the policy and legislation for every jurisdiction and letting the truth emerge in its own time, a room could be filled with paper with none of us being any the wiser. Certainly, no-one would have time to read it all, at least not for every jurisdiction.

There are also problems with analytical reliance on government vision and mission statements and associated declarations of philosophy and intent i.e. they cannot form a reliable basis for cross-jurisdictional comparisons of gambling regulation (although they might give some indication of government prioritisation and, perhaps, information about the political climate which contextualises the regulation). Importantly, it cannot be taken as a 'given' that formal statements of mission, purpose and value translate seamlessly into strategies and actions. While this would seem self-evident, it may be useful to elaborate on this point.

In her research on the principles underpinning Local Government management, Dempsey (2005) brings into question the usefulness of mission/value statements in providing information about the operations of local governments (pp.5, 6). She states that, in the public sector, the trend is to copy the business world in this practice, resulting in lengthy list of values: "*The Australian Public Service has 15 values written into the Public Service Act (1999) including the 'value' that the APS has the highest ethical standards and the 'value' that the APS values communication. Local governments have long lists too. They generally include honesty, integrity, democracy, sustainability, diversity and the like.*" However, she concludes that they are rather elusive in their translation into practice, with some of her concerns being

1. They are devoid of content: we hear of commitment to values, but not what they really mean in practice;
2. They are shopping lists of all things good: there is no understanding of potential conflict between them;
3. They are put to use to gain an edge in business;

4. They are advertisements to show the caring side of the enterprise and downplay the darker side of the organisation (corruption, dishonesty, exploitation of employees, marketing of lies to the consumer);

5. There is no connection between values in an organisation and the wider social system; (how do they interact?) (Dempsey 2005).

An OECD (1996) study of public service mission statements would seem to substantiate Dempsey's central contentions. It found that codes of conduct for public servants in several countries (six out of nine) were variously considered too specific, too general, unworkable, unused, unknown, unavailable or insulting to employees (p.34). At the very least, it is evident that the analysis of policy and regulation must necessarily move beyond taking policy statements and positions at face value. Certainly no government would grant funding for projects or consultancies on the sole basis of the value or mission statements of organisations lodging an 'expression of interest.' Furthermore, without the necessary *political will,* any good policy may be in danger of being circumvented in a variety of ways within the day to day operations of governments, bureaucracies and statutory bodies.

An additional problem in referring to government statements on gambling policy and orienting missions, values and philosophies is the protean nature of terminology, whereby the same terms may take on a variety of meanings across different jurisdictions e.g. '*harm minimization,*' '*responsible gambling*' and even '*public health.*' Policies under these 'umbrella' headings may also take on different hues and manifestations within different jurisdictions as shaped by local histories and unique regulatory, social and cultural contexts.

Given all of the above considerations it would seem useful to identify salient or pivotal dimensions of gambling policy and regulation by which to orient international comparisons.

Prescriptive Regulatory Approaches (or What We Like to See in Our Regulatory Frameworks)

However, before finishing with this section on overviews of gambling regulation (even while noting that detailed treatments are few), it would seem worthwhile to add a few comments about some *prescriptive* frameworks pertaining to single jurisdictions, Although, on the surface, this may appear as a diversion in my line of reasoning, some of the points will hopefully serve to provide a little more depth and breadth and some theoretical contextualisation to the central propositions to be made.

The broad policy framework to address all social and individual health issues for this author and as discussed elsewhere more fully, is that of '*public health*' (Borrell and Boulet 2005). This term refers conjointly to a philosophy, a theoretical approach and a methodology in ascertaining and addressing the health and well-being issues and situations of people living together in their communities and social settings. It is essentially holistic in analysis and strategic orientation, egalitarian in emphasis and affirming of community strengths, values and 'nous.' The ecological approach to public health by Kickbusch (1989, p.12) is endorsed here, i.e.:

Public health is the science and art of promoting health. It does so based on the understanding that health is a process of engaging social, mental, spiritual and physical well-being. It bases its actions on the knowledge that health is a fundamental resource to the individual, the community and to society as a whole and must be supported through sound investments into conditions of living that create, maintain and protect health.

Public health is ecological in perspective, multi-sectoral in scope and collaborative in strategy. It aims to improve the health of communities through an organised effort based on:

• Advocacy for healthy public policies and supportive environments,
• Enabling communities and individuals to achieve their full health potential, and
• Mediating between differing interests in society for the pursuit of health...

Advocacy for this approach to (problem) gambling policy is not new; for example, it has been promoted by the Centre for Gambling Studies at the University of Auckland (e.g. Raeburn and Herd 2003) and by Korn (2001) in Canada. Furthermore, it is enshrined in New Zealand's gambling policy (Markland 2005).

This being said, the focus of the current discussion, while deferring to the broad and holistic reference frame of the public health approach, is on the EGM '*product*' as being overwhelmingly harmful (in its current manifestations) and an '*efficient*' vehicle for revenue generation 'par excellence'—with the combination of these two factors complicit in the compromises (both actual and potential) to good governance in many jurisdictions.

This positions EGMs as constituting a type of '*environmental toxin*' in public health parlance, this point being underpinned by findings such as that by Australia's Productivity Commission (1999), that proximity and access to EGMs is related to harm in the population (chapter 8). Certainly, within the favoured modes of address and redress of the public health approach, certain parts of a system may be elevated as having particular salience in relation to individual and community health. This is the case even in the context of an ecologically-inspired totality of patterns of relationship within a society (Kickbusch 1989, pp 13–15), i.e. where certain points in a system or nodes of inter-relationship carry *elevated aetiological power* for the 'causation' of health as well as dis-ease (and, of course, collaboration with people living in their environments can assist in identifying and addressing such).

Hence, to move from abstraction to 'concrete' example—if a village or town was adversely affected by contamination of water further upstream—we would seek remedy at the primary source of the problem first—even while disseminating information about the current danger and offering immediate solutions (e.g. contact details of relevant health practitioners)—and perhaps seeking remedy for factors such as poor nutrition or working/living conditions that mitigate against health and resilience in the longer term. Remedy at the primary source of harm may even include advocacy and education about the perpetrating corporation and/or the resourcing of local activists to apply political pressure to have the harmful source removed or to have it provide 'reparation.'

In fact, focus on EGM harm at the '*first line of perpetration*' is in the spirit of this discussion on gambling policy as it will unfold. Importantly, it is eminently consistent with acknowledgement of a broader and more complex web of aetiology or causation—toward gambling-related (or other) harm within any given society. It is certainly consistent with the evidence of my own research on gambling and other social and health issues (often with others at Borderlands Cooperative) amongst numerous communities across metropolitan Melbourne and across the state of Victoria, Australia. Specifically, in our consultancy experience, nodes and factors in the perpetration of EGM-related harm have included combinations and configurations of the following themes:

• Lack of places for people to gather, meet others and feel they belong. Linked to this, general lack of a feeling of 'place' in a convivial social network;
• Similar to above, lack of ways for people to engage in creative/productive activities or meaningful occupation in community with others;

- Concomitant with the above, EGM venues serving to fill the social vacuum or 'market niche,' especially as community life and space is increasingly commodified and commercialised;
- Contemporary atomisation of social life with resulting social isolation and loneliness;
- Social and economic disadvantage and marginalisation, especially amongst some groups e.g. unemployed people, those with different types of disability, women in primary carer roles, newly arrived migrants and people on a low income and/or those living in low socio-economic areas;
- Mental illness and/or substance addiction with both individual and social implications;
- Unhappy, abusive and/or exploitive relationships, either past or present;
- High material expectations/aspirations; High social value placed on material wealth, with associations of success or being a 'winner.';
- Low self esteem, which may be associated with any combination of the above factors; and
- Commercial 'capture' and commodification of: instant gratification, emotional 'thrills,' obliteration of emotional pain, experiences of fantasy/escapist adventure and cultural symbols and icons.

The complexity of these and related factors has emerged in every local area study we have conducted—and their 'remedy' clearly requires a broad public health approach in collaboration and consultation with communities. However, it has also clearly emerged in every consultation, without exception, that the primary cause of EGM-related harm is the design and delivery of the EGM product itself i.e. as first line of perpetration.

In this type of vein, Øyen (2002) recommends that the problem of poverty, in particular, is most appropriately *addressed* at the point/s of production and that the various *levels* of perpetration are *identified* toward this end. She says:

> Some of the poverty producing forces are simple, in the sense that only the first line perpetrator needs to be identified since the poverty producing force rests with only one perpetrator. Others are complicated to trace because they have a long line of perpetrators to be identified, some of whom are part of parallel networks where other poverty producing, as well as poverty reducing, forces are at play (p.7).

Such a principle is certainly concurred with here—with the provision and regulatory facilitation of a harmful product in the community (currently constituted EGMs) being seen as a *first order perpetration*.

In this vein, the term '*harm prevention*' is preferred to that of '*harm minimisation*' (even while usage of the two routinely overlaps)—specifically in the special sense whereby sites and modes of harm *production* are identified and strategically intercepted. In particular, this is preferred to the term 'harm minimisation' for its greater analytical and methodological clarity and incisiveness.

While the term 'harm minimisation' tends to have a conservative focus in relation to legal products (i.e. addressing the negative 'fall-out' while availability of the product may be substantially accepted), it is also true that the goals of 'harm minimisation' are often laudable and frequently do seek to curtail or prevent the *promulgation of harm* in ways other than information provision and attitude change, for example. Specifically, it may pertain to *material change* to assist in the management of risk of harm—or, specifically

here, via constrictions to the supply of EGM hardware and/or software (Livingstone 2001; Livingstone et al. 2006). Furthermore the concept is broadly compatible with a public health approach (Markland 2005, in speaking about the New Zealand situation). The term, however, is also rather unhelpfully changeable and protean to the point that its communicative power is substantially diminished (Borrell and Boulet 2001a, pp 4–6; South Australian Centre for Economic Studies with the Department of Psychology, University of Adelaide 2005, pp 70–76). Compounding this last factor is the illusion created that everyone has the same thing in mind when talking, hearing or reading about 'harm minimisation.'

Before leaving this section on *prescriptive* frameworks and principles for gambling policy and regulation, brief mention should be made of the community advocacy position of the *Precautionary Principle* and the arguably more industry—leaning '*Reno Model*' (see Borrell 2005 for discussion of the latter point), followed lastly by a few words about '*consumer protection.*'

In fact, the impetus for this paper is underpinned by the spirit of the *Precautionary Principle*, which is another concept (in addition to ecological public health) borrowed from environmental sustainability theory. The idea inherent in the Precautionary Principle is that even when the evidence is uncertain we should err on the side of caution in the interests of individual and community health and well-being and, associated with this, the onus of proof or evidence should be placed on those wanting to introduce potentially harmful products (Borrell and Boulet 2001b, pp 6–8). It is rather heartening to see that this notion has taken hold in recent years in discussions of the rightful direction of government gambling policies (Australian Institute for Gambling Research 2002; Lepper 2004; Schellink and Schrans 2005). Interestingly, the Victorian Minister for Gambling invoked the Principle at the launch of an industry conference in Melbourne in 2004 (12th Annual Gaming and Casinos World Conference), stating that: '... *governments have to introduce harm minimisation measures, even though the cause and effect relationship between the measures and a reduction in harm has not been established. This use of the 'Precautionary Principle' is in line with the community expectations that the Government should and must act to reduce harm from problem gambling...*'

Antithetical to both a Public Health orientation and the Precautionary Principle is the Reno Model, even while it claims to espouse the former (for a critique see Raeburn 2005; Schellink and Schrans 2005). To state the case briefly here (as it has peripheral interest only for this paper), the Reno Model is underpinned by a clinical, individual pathology approach to the constitution and address of problematic gambling, constituting an atomised approach that is almost a polar opposite to the whole-system framing of public health models. Furthermore, it is clearly (though uncritically) informed by a neo-liberal ideology of human actualisation and democratic fulfillment through the *freedom to choose from a range of consumer products* (specifically in this case, gambling) (see Borrell 2005 for elaboration). Consistent with this, the authors state: '*Any responsible gambling program rests between two fundamental principles: (1) the ultimate decision to gamble resides with the individual and represents a choice; and (2) to properly make this decision, individuals must have the opportunity to be informed. Within the context of civil liberties, external organisations cannot remove an individual's right to make decisions...*' (Blaszczynski et al. 2004, p.311).

While the Reno Model adopts an industry-advocacy position, the importance of 'consumer' protection in the design and delivery of 'products' is supported by this author. The governmental role in overseeing this is, however, rightfully informed by, and subordinate to, the *primary role of democratic governments in representing citizen interests and aspirations*—as delegated '*upward*' by the people. In fact, this is the '*reason for being*' of governments and both the Public Health approach and the Precautionary Principle, as

compatible with this central role, can be invoked to inform both philosophical and pragmatic directions for governmental policies and operations. Furthermore, with the delegation of key decision-making upwards in contemporary, 'complex' democracies, the public accountability and public control of decision makers is of paramount importance (see Keane n.d, p.7).

This brings us back in timely fashion to the central point of this discussion, the role of governments in regulating EGMs (and similar gambling products), specifically on what basis to characterise and compare government regulatory frameworks across jurisdictions.

Suggested Dimensions for Characterising and Comparing Regulatory Frameworks

To assist in gambling policy analysis and comparison, a few issues that emerge regularly in debates, research and critiques are identified below. (It will subsequently be argued that conjointly they might inform an operationalisation of governmental '*conflict of interest*' in relation to EGM products as they are currently constituted).

1. Conflict of interest In this discussion, inherent conflict of interest for governments in regulating EGM gambling industries is identified as a useful point for characterisation and comparison of regulatory frameworks across jurisdictions i.e. *exactly how do governments attempt to address this in their policy and regulatory frameworks?* Such a conflict is often argued to emerge with governmental imperatives for both EGM revenue protection/ generation (from an evidently harm-generating product) and representation of the public interest; it is frequently a 'bone of contention' in critiques of governmental policy (e.g. Campbell 2005; Smith and Wynne 2004, p.7). Arguably, where there is such an apparent conflict of interest, *representation of the public interest* needs to be explicitly elevated as the prime 'reason for being' of governments—which goes to the heart of the critique—that is, when this is patently not happening.

Governments may derive financial benefit via taxation regimes, as in Australian jurisdictions, or directly, as with Canadian provincial governments which manage and operate EGM industries. In Canada, the potential for conflict of interest appears to be even more transparently problematic as governments are not only beneficiaries of revenue from gaming machines through owning and managing such businesses, they are actively involved in promoting it to their citizens, even where this occurs through the intermediary of a management company.

Thus, it is proposed here that *this aspect of gambling policy is the one that provides the most salient point for comparison between jurisdictions*. Then again, we might ask why this is being elevated to the status of a fundamental issue. In other words, *where exactly lies the ostensible conflict of interest*? Exactly what is the problem with governments deriving revenue from industries they are also regulating? The broad answer is that conflict of interest emerges when the government is the beneficiary of an industry which *causes considerable harm to or endangers (at least part of) the populace* through its products— which brings us to the following points.

2. Some forms of gambling have been found to have widespread harmful effects for citizens in general This is the case with rapid and continuous forms of gambling, particularly with EGMs, which have become powerful machines for parting customers from their money due

to technological developments, such as random number generation, computer networking (allowing large jackpots and customer loyalty programs and promotions), central computerised monitoring (that has paved the way for deregulation in many instances as well as providing marketing information) and improvements in video technology that have allowed for much more interesting and entertaining displays and games (Hartley and Borrell 2004). Other 'addictive' EGM features made possible by technological innovation include misleading impressions about the odds of winning, illusions of near misses, the increase in smaller wins, 'free spins' or games, bank note acceptors and multi-line betting (Livingstone et al. 2006; Horbay 2004). In fact, rather than 'problem gamblers' being aberrant or 'defective' in some way, *there is much evidence that their behaviour coheres with what the EGM product is designed and marketed for i.e. optimal spending on the gambling product.*

According to a study by Dickerson et al. (2003), loss of control is not reducible to the inherent pathology of some individuals, but is a common and expected outcome of the regular interaction between human beings and contemporary forms of gambling (p.22). They elaborate on this saying:

> In contrast to regular gaming machine play (and probably all other continuous forms of gambling) the ordinary regular player may be consuming/using the gaming product in just the way in which the manufacturer, the venue operator and the regulatory body intended, and yet very likely be placed in immediate risk of harmful impacts because of the loss of control that at times is an integral part of his/her pleasurable gaming experience (p.24).

Most importantly here, a growing number of studies, particularly in Australia and Canada, show that a very high proportion of regular gaming machine users have problems with their gambling. This ranges from 16% of players to 48% depending on the type of venue studied, jurisdiction and methodology (*Australia*—Blaszczynski et al. 2001, p.55; Productivity Commission 1999, pp.6.1, 6.54; *Canada*—Schellinck and Schrans 1998, pp.3,15). Consistent with this, a range of studies show that an extraordinarily large proportion of ensuing revenue, for both industries and governments, derives from people having problems with their gambling (e.g. *Australia*—Productivity Commission 1999, pp.7.45, 7.46; *Canada*—Williams and Wood 2004, p.6).

It is, arguably, a substantial problem when governments thus derive a high level of revenue, either directly or indirectly, from activities that have been shown to directly harm their citizens—citizens who they are not so much meant to 'protect,' but to 'represent'; governments ostensibly constitute the voice *of* the citizenry in overseeing their well-being. *In fact, the regulatory oversight of (EGM) consumer protection is properly a function of government's main purpose, broadly speaking, which is to represent the interests of the people.* This leads to the following point about the current dependence of many governments on gambling revenue, specifically those that are both most lucrative and most associated with the generation and dissemination of harm, such as EGMs.

3. Many governments have become very dependent on revenue from new forms of gambling that have been shown to be intrinsically harmful to people who engage in them on a regular basis (see above) To illustrate this point, a brief account of the situation in Victoria, Australia is given here.

The recent history of gambling expansion in Australia is intricately connected to that of changing taxation regimes and 'squeezes.' The gambling industry has grown exponentially since the 1980s, largely attributable to State governments' revenue shortfalls, as their traditional tax bases have been eroded by a neo-liberal push for lower taxation, an ongoing squeeze of revenue from the Commonwealth government to the states and territories and concomitant worldwide economic downturns. In addition, this expansion has been facilitated by technological developments that assist in industry monitoring (assuaging governmental concerns about probity) and enhance the product design and marketing capabilities of gambling interests.

EGMs dominate gambling activity in Australia. At the time of the Productivity Commission's (PC) (1999) study, they accounted for half the total business and taxation revenue collected from all forms of gambling. Furthermore, gambling taxation represents a significant and rising share of state and territory governments' own tax revenue (p.2.1).

The Australian Productivity Commission (1999) found that prevalence of problem gambling varies according to the mode of gambling *'with higher prevalence for regular players of gaming machines, racing and casino table games. For example, around one in five weekly gaming machine players have significant problems'* (p.6.1). While 22.59% of weekly EGM players were found to be problem gamblers (i.e. with a SOGS 5 + score) 4.27% of adults gambled on EGMs weekly. A lower proportion of adults gambled weekly on casino table games (0.25%); however, 23.84% of those that did had gambling problems. With weekly gambling on racing, 3.45% of adults participated and of these 14.72% had problems (PC 1999, p.6.54).

Thus the '*danger*' inherent in the gambling mode—as evidenced by the proportion of those gamblers who develop problems—must be viewed in conjunction with the magnitude of the gambling '*offer*' or availability to the populace[1] (in addition to the nature of public health efforts), a point well made by Chevalier and Papineau (2004). Of particular interest for the current discussion, the model is offered as a useful guiding heuristic, which appears to fit well with the idea of 'lines of (harm) perpetration' (Øyen 2002), referred to in the previous section on 'prescriptive models'—as Chevalier and Papineau focus on product-related harm (1) 'offer' or availability; and (2) 'dangerousness' that mediates this availability (with specific reference to EGM features) in conjunction with (3) public health action. Thus, in the Australian context as briefly referred to above, EGMs can be seen as most harmful to citizens due to both the nature of the product (as currently constituted) but also because of widespread availability and uptake.

To add to the 'picture' and to extend the data to cover other parameters of the *conflict of interest* being referred to, some information about gambling taxation in Victoria and Australia is briefly given below.

Gambling and EGM Taxation Revenue in Australia and Victoria

There are six states (including Victoria) and two territories in Australia. While the Commonwealth government has very little direct responsibility for the regulation of gambling, it now collects a Goods and Services Tax (GST) at a rate of 10% on gambling expenditure

---

[1]In their heuristic model, five dimensions of accessibility are referred to: legal, temporal, financial, geographic and symbolic.

Table 1 Own Source Tax Revenue from Gambling for Victoria and Australia 2003/2004

	State of Victoria	Total all Australian States
Percentage of States own-source tax revenue from all gambling	13.1% ($1,324 million)	10% ($4,039 million)
Percentage of State's own-source revenue from gaming machines	8% ($810 million)	6% ($2,425 million)

Source: Tables 2 and 3 in Doughney (2005).

(a point that is often overlooked; Livingstone 2005, p.2). Otherwise most gambling taxation revenue goes directly to state and territory coffers, with an exponential rise in this since the expansion of the EGM industry in most states (Livingstone et al. 2006).

In Victoria, specifically, total gaming machine losses have risen from 255 million dollars in the year 1992/1993 to 2,398 million dollars in the year 2004/2005 (Doughney 2005, p.4). Table 1 demonstrates the very high dependence of Australian states on gambling revenue, particularly that drawn from EGM activity.

As noted above, Victoria draws a notable 8% of its own-source revenue from EGM revenue.

The 'Problem of Problem Gambling' and its Place in Gambling Regulation

Promotion of the idea that EGM gambling is much like any other form of entertainment is ubiquitous and has been for some years now, at least in Australia (Livingstone et al. 2006, p.vii). As noted by Dickerson et al. (2003), '*Contemporary gambling is marketed as a leisure and entertainment product*' and '*...gaming is now typically described by the gambling industry as purchasing a commodity or leisure product*' (pp 40, 41). This is certainly supported by even a cursory scan of public industry documents and statements (e.g. AGMMA n.d., p.1; Tabcorp Holdings Ltd 2006, summary and recommendations; Tattersall's 2006, p.19).

However, the research into problematic gambling demonstrates that EGM gambling is most *unlike* other forms of entertainment, not least because a very high proportion of regular participants and those around them suffer harm from their participation (as noted above).

Thus, as many citizens, policy analysts and researchers have done, we might ask what measures governments are taking to address this—especially in the face of their own reliance on revenue from modes of gambling that have been shown to be harmful and the potential concomitant compromise of traditional governance principles. To reiterate, the key policy issues that would seem to be most pertinent *in conjunction with each other*:

1. There are *conflicting roles* for governments—as beneficiary of gambling revenue and as industry regulator.
2. Some forms of gambling (specifically, EGMs in their current forms of hardware, software and modes of supply) have been found to have widespread harmful effects for citizens and to be *intrinsically harmful* to a very large proportion of people who engage in them.
3. Many governments have become very *dependent on revenue* from these new forms of gambling e.g. in Victoria, Australia.

Together, these points may form the basis of an *operationalisation* of governmental *'conflict of interest'* in relation to gambling policy and regulation, particularly to assist in cross-jurisdictional comparison and analysis—the primary point upon which this discussion is pivoted.

Operationalisation of 'Conflict of Interest' as a Focus for Cross-Jurisdictional Analysis and Comparison of Gambling Regulation Frameworks

In order to summarise and bring some of the threads and main points above to specific purpose, it is suggested here that:

(1) There is a need for some general agreement on dimensions for guiding the cross-jurisdictional analysis of gambling regulation;

(2) The regulatory means of addressing actual and potential conflicts of interest for governments in protecting gambling revenue and safeguarding the public interest provides a useful focus for (1); and, furthermore:

(3) Such governmental conflict of interest can be usefully operationalised via the conjoint measures of:

   a. The proportion of participants in different forms of gambling who are experiencing gambling-related problems;

   b. The proportion of both industry and government revenues that are derived from people experiencing gambling problems; and

   c. The level of dependence governments have on gambling revenue, in total and according to the various modalities.

Of course, descriptive information would also be required to supplement such data, not least the magnitude of the gambling 'offer' of the different gambling modes as referred to by Chevalier and Papineau (2004), with a focus on the EGM product which we already know to be disproportionately harm-generating. In addition, given the complexity and range of the different regulatory arrangements, stretching to the very nature and roles of the parties who manufacture, monitor, own and manage EGMs and including their various relationships with government, a description of such would inevitably be necessary alongside a description of specific regulatory arrangements to address the *conflict of interest* issue.

As a brief example of the latter, in Victoria, as part of a review of gambling legislation in 2002 (following a decade of such revisions in response to the jostling of interest groups and a consistently high level of community concern), the responsibility for gambling regulation and policy was shifted from the Department of Treasury and Finance to the Department of Justice. Gambling tax collection remained with the Department of Treasury and Finance. In some acknowledgement of the conflict of interest problem, the functions of gambling tax collection and gambling regulation were thus placed within the portfolios of two different departments while, of course, remaining within the jurisdiction of one government. Nevertheless, as reported by Livingstone et al. (2006, p.x): '*Current practice for development of technical standards and approval of gaming equipment is largely non-transparent and appears not to explicitly address harm minimisation principles to the same extent and depth as probity and revenue issues.*' One might thence argue that the mere split of revenue and harm prevention functions between different departments, whilst being with the one government, does not necessarily solve 'the problem.'

Introduction to the 'Public Accountability Approach' for Guiding Gambling Regulation

Although I began with the task of analysing and comparing international gambling regimes, at this point in my reasoning trajectory (as per the previous section), it occurred to me that I was also looking at some good material to assist in the identification and assessment of the *effectiveness* of policies in the face of product-induced harm and the associated governmental conflict of interest *within single jurisdictions*—which could also be used in setting specific policy targets. This is not to suggest for a moment that such criteria could or should point to the totality of initiatives to be contained within a gambling policy. Clearly, a public health approach, advocated here, would cast its preventive and nurturing health and well-being net much wider (especially given the complexity of the inter-related aetiological factors as highlighted already). In the context of 'first line perpetration,' however, albeit in a more complex web of causation, it is suggested that the following be carried out on a routine basis towards designated targets over time (with gambling regulation thus assessed for effectiveness and progress *within-jurisdiction* as well as *across-jurisdiction* for purposes of analytical comparison).

1 Regular auditing of the *proportion of participants in different forms of gambling that are having problems*, with goals set for this to diminish over time where appropriate, with penalties and incentives (financial and/or regulatory e.g. pertaining to licenses and permits) if progress goals are/are not met.
2 Regular auditing of the *proportion of both industry and government revenues that are derived from people with gambling problems.* Again, there should be goals set for this proportion to diminish over time, with penalties and incentives (financial and/or regulatory) if progress goals are/are not met.

The third point follows from the first two that refer to the level of adverse impact generated by the product, but is qualitatively different in that it refers to government dependence on the harm-generating product:

3 Regular auditing of the *level of dependence governments have on different types of gambling revenue* in relation to all other forms of revenue, with governments setting progress goals and a commitment to make progress information publicly available and accessible.

Ideally, the results of all such audits would appear in government and industry Annual Reports and would be accessible via the Internet for the general public. As this approach includes both monitoring and public transparency in relation to gambling regulation, specifically that governments set goals and measure their progress in reducing product-generated harm and addressing gambling industry—related conflicts of interest, I have called it the '*Public Accountability Approach*.' Importantly, such auditing should be carried out by bodies that are independent of industry, which is not usually the case with current monitoring of EGM data in Australia.

Some Implications for Prevention

While this discussion has not set out to provide a 'prescription' for gambling harm prevention, there are nevertheless some implications of the above discussion for such.

Collection and publication of the data toward designated and specific goals is consistent with the Precautionary Principle as it very much places the onus and responsibility on (EGM) gambling industries to reduce harm and to provide motivation for industries to research and develop strategies for doing so. This reverses the current situation in most jurisdictions, whereby industries are not required to demonstrate product safety before releasing it/them in the community (as is the case with pharmaceutics, for example).

In addition, such information could be very usefully combined with optimal utilisation of 'real time' EGM data through central monitoring systems, in order to inform product safety parameters. This information, in turn, could be used by regulators in the EGM approval process (overseeing both EGM hardware and software in relation to the potential to facilitate problem gambling) and also in setting national EGM safety standards. While EGMs and their games and features might be released into the community when complying with set parameters (which are currently inadequate in addressing safety), products could be given further limited trials, with this information being used to inform (more flexible and responsive) safety standards in a feed back loop. (Currently, in Australia, real time EGM data are used optimally by industries to make commercial decisions, with regulators making poor use of such in 'minimising harm.') EGM technology to be monitored could extend beyond individual platforms and software to wider networks, venue designs and locations, industry marketing practices and EGM 'offer', the latter as discussed by Chevalier and Papineau (2004).

Consistent with the above and the 'Precautionary Principle,' Livingstone et al. (2006, p.ix) include in their recommendations to the Victorian government that the regulator:

1. Develops risk management profiles at the game/platform, venue and operator levels in order to provide benchmarks against which to undertake harm minimisation monitoring activities; and
2. Ensures that innovations in EGM game and platform design are not fully approved and deployed until they have been subjected to harm minimisation scrutiny via limited initial deployment and the use of actual EGM data and a risk management profile.

In general, a key proposition that has underpinned reflections of the material presented here is that the main impetus of gambling policy should not be directed at the mythical aberrance or pathology of a putative minority of people in the population, but at the problem-inducing aspects of the product itself (i.e. EGMs), which are undoubtedly associated with their voraciousness in transferring consumer spending to industry profit and government coffers. This is in line with Øyen's (2002) proposition that harm needs to be identified and prevented at its source/s—beginning with prime cause, even while acknowledging more complex webs of aetiology that may be addressed as part of a long term and broadly conceived public health approach.

Summary

To summarise, I have attempted to:

1. Provide a guiding frame for analysing and comparing gambling regulatory frameworks across jurisdictions;
2. Propose some ideas for a 'public accountability approach' to gambling regulation within single jurisdictions;
3. Raise some issues relating to gambling policy in general in discussing and contextualising the above;

4. Place ideas for analysing and informing gambling policies and regulations within both a public health and a precautionary approach, while giving precedence of attention to primary cause or 'first line of perpetration'; and

5. Highlight some implications for the design of prevention strategies.

As a concluding observation, it seems fitting to return to the issue of proper governance, especially given the ubiquitous arguments that democratic process equals the right to choose and consume gambling products, unfettered by 'undue' regulation. The recent example of Norway announcing the full removal of all EGMs from community locations demonstrates that government responsibility does not have to falter at the doors of 'freedom of choice' or of 'minimal state intervention' into the lives of free citizens and into 'free market' operations. To the contrary, in order for those 'freedoms' to become ethically sustainable, free citizens have delegated political power to their representative government to ensure that the power of some does not reduce, or even eliminate, the power of the many—especially as the freedom of the majority may well become a figment of their imagination after having exercised their 'freedom' to gamble.

References

Australian Gaming Machine Manufacturers Association (AGMMA) (n.d.). Australian Gaming Machines. Do you know the whole story? Retrieved September 21, 2006, from http://www.agmma.com/pdf/gamingmachines.pdf.

Australian Institute for Gambling Research (AIGR) (2002). *Methodology project for the Victorian Local Governance Association.* Melbourne: VLGA.

Blaszczynski, A., Ladouceur, R., & Shaffer, H. J. (2004). A science-based framework for responsible gambling: The Reno Model. *Journal of Gambling Studies, 20*(3), 301–316.

Blaszczynski, A., Sharpe, L., & Walker, M. (2001). *The assessment of the impact of the reconfiguration on electronic gaming machines as harm minimisation strategies for problem gambling: A report for the gaming industry operator's group.* Sydney: University Printing Service.

Borrell, J. (2005). *The implications of values in gambling research. Paper presented at the 4th annual Alberta conference on gambling research: Public policy implications of gambling research.* Alberta: Alberta Gaming Research Institute.

Borrell, J., & Boulet, J. (2001a). What is harm reduction (or harm minimisation)? *VLGA Gambling Research Newsletter, 1*(9), 4–6.

Borrell, J., & Boulet, J. (2001b). VCGA hearings, the onus of proof and the Precautionary Principle. *VLGA Gambling Research Newsletter, 2*(3), 6–8.

Borrell, J., & Boulet, J. (2005). A theoretical exploration of culture and community: Implications for prevention, research and problem gambling. *Journal of Gambling Issues, 13.*

Bostock, W. W. (2005). Australia's gambling policy: Motivations, implications and options. *Journal of Gambling Issues, 13.*

Campbell, C. (2005). *Policy implications of the Law Commission of Canada study on 'The Legalisation of Gambling in Canada'. Paper presented at the 4th annual Alberta conference on gambling research: Public policy implications of gambling research.* Alberta: Alberta Gaming Research Institute.

Chevalier, S., & Papineau, É. (2004). The measurement of gambling offer. Paper presented to the Insight Nova Scotia Conference. Halifax.

Dempsey, K. (2005). Values in business. *New Community Quarterly, 2*(4), 5–6.

Dickerson, M., Haw, J., & Shepherd, L. (2003). *The psychological causes of problem gambling: A Longitudinal study of at risk recreational EGM players.* Sydney: University of Western Sydney, School of Psychology.

Doughney, J. (2005). *The social economics of poker machines in Victoria: The human, policy and legal implications of the evidence.* (in publication).

Hartley, E., & Borrell, J. (2004). *Gaming machines: Technology, industry and marketing.* (Unpub manuscript).

Horbay, R. (2004). *Slot tutorial treatment guide.* Ontario: Game Planit Interactive Corp.

Keane, J. (n.d.). *Complex democracy.* Retrieved September 21, 2006, from http://www.johnkeane.net/pdf_docs/jk_complex_democracy.pdf.

Kickbusch, I. (1989). Good planets are hard to find. Approaches to an ecological base for public health. Paper presented to the Sustainable Development and Health workshop. Melbourne.

Korn, D. A. (2001). Examining gambling issues from a public health perspective. *The Electronic Journal of Gambling Issues*, *4*.

Lepper, J. (2004). *Competition and control in UK gambling policy. Presentation to the Gambling and problem gambling in New Zealand — Taking Stock' Conference*. Auckland: Auckland University of Technology.

Livingstone, C. (2001). The VLGA gambling policy framework. *VLGA Gambling Research Newsletter*, *2*(2), 7.

Livingstone, C. (2005) Desire and the consumption of danger: Electronic gaming machines and the commodification of interiority. *Addiction Research and Theory, 6*, 523–534.

Livingstone, C., Woolley, R., Borrell, J., Bakacs, L., & Jordan, L. (2006). The Changing Electronic Gaming Machine (EGM) industry and technology: Final Report, Prepared by Australian Institute for Primary Care (AIPC), La Trobe University for the Department of Justice, gambling research program: Melbourne.

Markland, J. (2005). *How New Zealand's Gambling Act 2003 prevents and minimises harm. Presentation to the International Conference on Problem gambling: Living with gambling —A global community response*. Auckland: Auckland University of Technology.

OECD (1996) *Ethics in the Public Service: Current issues and practice. Public Management Occasional Paper. No: 14*. Paris: Organisation for Economic Co-operation and Development. Retrieved October 7 from: http://www.oecd.org/dataoecd/59/24/1898992.pdf.

Øyen, E. (2002). Poverty Production: A Different Approach to Poverty Understanding. Paper presented at the International Conference on Social Science and Social Policy in the 21st Century, Vienna. Retrieved 4 June 2006 from: http://www.crop.org/publications/reports.cfm.

Productivity Commission (1999). *Australia's Gambling Industries, Report No.10, Volume 1.* Ausinfo: Canberra. Retrieved October 5, 2005, from http://www.pc.gov.au/inquiry/gambling/finalreport/.

Raeburn, J. (2005). The Reno model and gambling-related public health in New Zealand — A critical appraisal. Presentation to Policy, Practice and Research — One year on conference. Auckland: Auckland University of Technology and Gambling Helpline New Zealand.

Raeburn, J., & Herd, R. (2003). *Gambling and public health: A workplan*. Prepared for the Problem Gambling Committee as a joint venture between Hapai Te Hawora Tapai Ltd and the Problem Gambling Foundation of New Zealand.

Schellinck, T., & Schrans, T. (1998) *Nova Scotia VL Player's Survey*. Focal Research Consultants Ltd for the Nova Scotia Department of Health: Halifax, Nova Scotia.

Schellinck, T., & Schrans, T. (2005). *A framework for a global gambling strategy, responsible gambling, public policy and research: The Halifax Model. Presentation to the 4th Annual Alberta Conference on Gambling Research*. Alberta: Alberta Gambling Research Institute. Retrieved October 5, 2005, from http://gaming.uleth.ca/agri_downloads/1482/schellinck.pdf.

Smith, G., & Wynn, H. (2004). *VLT gambling in Alberta: A preliminary analysis*. Alberta: Alberta Gaming Research Institute.

South Australian Centre for Economic Studies (2005). *Problem gambling harm: Towards a national definition*. Melbourne: Office of Gaming and Racing for Gambling Research Australia.

Tabcorp Holdings Ltd (2006). Vision for the Gaming Industry (submission to the Victorian EGM licence review), Tabcorp Holdings Ltd: Melbourne. Retrieved August 4, 2006, from www.justice.vic.gov.au.

Tattersall's (2006). Gaming Machine Licence Arrangements Post-2012 Issues Paper. Tattersall's: Melbourne. Retrieved August 4, 2006, from www.justice.vic.gov.au.

Williams, R., & Wood, R. (2004) *Final report: The demographic sources of ontario gaming revenue*. University of Lethbridge for the Ontario Problem Gambling Research Centre: Lethbridge.