

# Claremont-UC Undergraduate Research Conference on the European Union

Volume 2007 *Claremont-UC Undergraduate Research Conference on the European Union*

Article 14

February 2012

## Theorizing the Odds: The European Union, Online Gambling Regulation and Integration Theory

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### Recommended Citation

Spencer-Notabartolo, Alexis (2007) "Theorizing the Odds: The European Union, Online Gambling Regulation and Integration Theory," *Claremont-UC Undergraduate Research Conference on the European Union*: Vol. 2007, Article 14. DOI: 10.5642/urceu.200701.14

Available at: <http://scholarship.claremont.edu/urceu/vol2007/iss1/14>

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# THEORIZING THE ODDS:

## THE EUROPEAN UNION, ONLINE GAMBLING REGULATION AND INTEGRATION THEORY

**Alexis Spencer Notabartolo**

*“One of the activities of the Community shall include... a contribution to... the flowering of the cultures of the Member States.”*

- Treaty of Rome, Article 3.

*“The internet has enabled people to access information in entirely new ways, promising a revolution in the production and storage of human knowledge. Yet the most successful industries of the early internet, gambling and pornography, seemed to appeal to people’s baser desires.”*

- David G. Schwartz, Cutting the Wire: Gambling Prohibition and the Internet

Why would the European Union fundamentally undermine itself? Unity in diversity has long been the ideal of the EU, a voluntary association of independent and democratic European states in monetary and political union. Often held up as a beacon for other regional integration movements to follow, the EU is by no means a wholly peaceable organization without disagreement and debate. Often, the principles which the EU was found upon clash with the process of creating policy to deal with the reality of interconnected economies in the global world. When the situation also involves the regulation of cultural norms and the transnational web of people and funds found on the internet, conflict is inevitable.

Online gaming<sup>1</sup>, although still a relatively young industry, has proven to be both a force of economics to be reckoned with and a cultural flashpoint of no small measure. Under the functional terms of the European Union, those who administer online gaming sites are considered to be providing a service within the framework of the EU’s common market. Unlike most areas of common market operation, however, and despite the lobbying of interest groups, the EU has taken no action to regulate online gaming at the supranational level. In the absence of EU action harmonizing disparate national approaches to the industry, substantial intra-EU conflict has emerged within the forum of the European Court of Justice (ECJ). The rulings of the ECJ have been slow to surface as

concrete policies implemented by EU member states, if they are adopted at all. This active dismissal of EU structures, which were formed to better life on the European continent and decrease conflict, is peculiar and bears on the larger discussion of European regional integration. The “Europeanization” of Europe, or “the emergence and the development at the European level of distinct structures of governance” (Cowles, et. al, 2001, p. 1), has generated a body of literature attempting to explain why regional development in the EU has occurred in the fashion it has. Discussion in academic circles regarding EU policy formation directing discrepant cultural norms of member states, however, has been relatively limited. Additionally, there has been little assessment of online gaming, a commercial enterprise affecting the global economy that Europe operates in as well as an issue subject to cultural debate and “moral” regulation. By examining prominent literature relating to European integration as well as those works dealing with cultural regulation with the most applicability to the field of online gaming, the need for a synthesis of theories becomes clear. Current approaches to European integration theory enfranchise an almost slavish adherence to one school of thought or another, a divide most Europeanists are guilty of perpetuating. In dealing with the regulatory complications presented by the internet, current discourse on the maintenance of cultural diversity becomes alarmingly disconnected from the real world. Unless dominant theories of European integration are seen as more interrelated than they currently are, theory will not keep up with reality.

An overview of the current regulatory and political situation of online gambling in the European Union will first be provided, followed by an examination of prominent literature on European integration and structural operation. Special attention will be given to work examining cultural regulation within the EU and its relation to the current situation of online gaming. The two key mechanisms able to remedy policy discrepancy amongst European Union member states—the directive and European Court of Justice rulings—will be assessed in the context of how current thought explains their efficacy (or lack thereof). Throughout this paper, the current approach to theory, where the virtues of a given approach are extolled while devaluing or ignoring another, will be argued to inhibit comprehensive analysis of how the EU handles the regulation of culture. Theoretical shortcomings will be especially clear in the appraisal of how instruments of EU governance function in relation to the case of online gaming. Without movement towards a blending of theories on European integration, study of cultural policy in the EU will remain superficial and uninformative as to future paths of action. The situation of online gaming speaks to this, with serious implications for both broader cultural policy and Europe’s ability to adapt in a borderless world.

### **BETTING ON THE EU: COMMON MARKET REGULATION AND ONLINE GAMING**

It is a tenet of democratic theory that a state’s job is to protect public order. Gaming has often been cited as a challenge to that order. Historically, “the belief in luck, in chance, was seen as an attack on the influence of the church” (Polders, 1997, p.66), and thus immoral and dangerous to governments basing their legitimacy on upholding moral rectitude and order. At the same time, society has long been ambivalent about gambling, the prohibition of which, “was often supported by a citizenry who would indulge on the sly and then expect the authorities to turn the other way—especially when gambling was undertaken just for fun, among friends and acquaintances, or for worthy causes” (Eadington and Cornelius, 1991, p. xxiv). Gaming is an industry in which government policies have long been

tioned to normative debates about the activity's effect on individuals and the functioning of the state. Law-abiding citizens, the underage and the easily manipulated have at different times, in countries around the world, been cited as requiring protection from the dangers of gaming. States consequently developed idiosyncratic methods for dealing with perceived threats to community morals and providing for their citizenry based on a variety of factors dependent upon the state in question. In its interpretation of how best to respect cultural diversity among its member states, the European Union has accidentally enfranchised tension between the online gaming regulations adopted by individual states and the operation of the EU common market.

It is important to begin discussions of gaming or gambling policy with a clear idea of the topic being discussed. Broadly defined, gambling is "an activity in which a person subjects something of value—usually money—to a risk involving a large amount of chance in hopes of winning something of greater value, which is usually money" (Thompson, 1997, p.1). In most forms of gambling, the outcome is typically known a short period of time after the activity commences and the goal is some type of material or monetary gain. Also, as this is an investigation of the regulatory practices of online gaming, these activities can and are being undertaken on the internet, and are often referred to as remote gaming operations.

Three activities comprise the bulk of online gaming transactions, both in Europe and internationally. The most popular of the three (Burmester, 2005), is the lottery. In this activity, individuals typically choose a set of numbers and are awarded winnings based on how many match with a randomly generated result ("Glossary: L," 2006). While the image of purchasing a lottery ticket at a local convenience store is envisioned by most Americans, online lottery sites are wildly popular internationally and becoming more so. The second format online gaming can assume is bookmaking. In this activity, an individual places a monetary wager on a given issue which is then "booked" against the odds of that wager being correct. People have the ability to bet on practically anything, from which national team will win the World Cup to how long a celebrity marriage will last. The third form of online gaming is that of casino games, which includes activities such as poker, blackjack and roulette. These games are notable in that they often "provide a predictable long-term advantage to the casino, or 'house', while offering the player the possibility of a large short-term payout" ("Casino Games," 2006). With online systems, casino games can be played between an individual and a computer or amongst individuals gambling at the same site.

The online gaming industry in the European Union is approaching annual revenue of a billion Euros (Burmester, 2005) and some 1.5 million Europeans visit online casinos every month ("One in Ten," 2006). The EU common market and its regulations strive to eliminate protectionism and unify trade practices amongst EU member states, but online gaming has been a strange exception to those rules. In principle, the aims of the common market are both agreeable and attractive, but the interests of individual member states have been known to intervene and seriously complicate the process of policy harmonization. When European governance bodies—the European Parliament, the European Commission or the EU Council of Ministers—require states to amend their domestic regulations to match those decided on at the EU level, a directive is issued. These directives, or "collective legislative act[s] ... which require member states to achieve a particular result without dictating the means of achieving that result" ("European Union directive," 2006), typically cover a spectrum of policies relating to a given area, such as the enforcement of intellectual property rights across the EU. To date, those directives which could include online gam-

bling regulation, such as the recent Services Directive (“Position,” 2006), have exempted online gambling. In the case of the services directive, inclusion of online gambling became entangled with the larger debate of the “country-of-origin” principle, a highly controversial provision where, “the law of a service provider’s home country applies even when a service is provided in a different EU country” (“Parliament,” 2006). This contentious proposal has been argued as, “one of the reasons for the negative outcome of the referendum on the EU Constitution in May 2005” (“Parliament,” 2006) and was later replaced with, “a much softer ‘freedom to provide services’” (“Parliament,” 2006) clause. While the main cause for removing online gaming from the Services Directive relates more to arguments of the gambling sector’s political “sensitivity” (“Europe Excludes,” 2006), an association with the “country-of-origin” debate would in no way aid the status of online gaming regulation.

Before their exemption, however, online gaming endeavors were the topic of substantial discussion in several forums. The European Ombudsman published a report in May of 2006, examining claims registered by European citizens of maladministration on the part of the Commission in adequately addressing complaints of infringement on fundamental rights by member states. The claims lodged assert that the German government, in both allowing the operation of online and traditional<sup>2</sup> gaming monopolies by individual German states, or lander, as well as ordering a provider of sports betting services to cease all business dealings, violated Article 49 of the 1957 Treaty Establishing the European Community.<sup>3</sup> Article 49 sets out that signatory states agree that, “restrictions on freedom to provide services within the Community shall be prohibited,” and in the absence of an EU directive further elaborating how policy towards online gaming should be structured, is governing law in the online gaming industry. The European Ombudsman, a creation of the 1992 Treaty on European Union,<sup>4</sup> is “empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role” (article 20d). In issuing a special report on the matter, the Ombudsman has taken the strongest possible action he has within his power, something done only thirteen times since 1995 (“Ombudsman,” 2006). The Ombudsman argues in his report that the Commission’s claim that common market regulation of online gaming services is “highly politically sensitive and controversial” (Diamandouros, 2006, p.1), does not, “relieve the Commission of its duty to deal properly with such complaints” (Diamandouros, 2006, p.1). The Ombudsman’s report was issued two weeks after the Commission announced a decision of formal notice on the infringement complaint. The Commission’s decision required several EU states to prepare reports explaining and justifying their domestic policies restricting sports betting (“Free movement,” 2006), denying the Ombudsman’s report of much press and citizen attention, despite the significance of its release.

Despite the European Commission’s refusal to act at the European level to regulate online gambling, the body has taken a more proactive role as of late in mediating conflicts arising from the industry’s unique status. On April 4th, 2006, the European Commission issued Letters of Formal Notice to seven member states<sup>5</sup> for having legislation dealing with online gambling which conflicts with Article 49 and ECJ case law on the topic. In March of 2007, the Commission followed up with Reasoned Opinions against Denmark, Finland and Hungary for not showing, in the words of the European Betting Association, “any indication or willingness to reconsider their monopolistic restrictions or engage in a process

of constructive dialogue with other stakeholders” (“European Betting,” 2007). Special attention has been placed on Germany, where there is a *lander*-enacted total ban on online lottery and sports betting, but allowed betting for horse races. The European Commission has threatened Germany with legal action if they do not alter their policies, stating that, “a proposed total ban is disproportionate and there are less restrictive measures, such as mandatory prior registration and strict guarantees on identification” (“EU Warns,” 2007).

With a strong division between states that clearly regulate online gambling and allow citizen access and states that restrict online gaming operations in an attempt to monopolize the market and discourage or monitor their citizens from patronizing gaming sites, individual countries have recently made some domestic movement to rectify policy disharmony independent of the European Court of Justice (ECJ) rulings. Malta had previously been the EU pariah, advocating a model of regulation where anyone can apply for an operational gaming license with relatively few restrictions. Parties interested in operating online gaming services in Malta, for example, may do so as long as they exist as a limited liability company registered in Malta, are without a criminal record, pay the appropriate taxes and fees and prove that their software has not been illegally obtained (Malta Lotteries and Gaming Authority, 2004). This policy has often placed Maltese licensed firms in a position of unintentionally infringing upon the more restrictive online gaming policies of other member states, occasionally resulting in legal action. A recent example of this involved the French government, who pressed Malta-licensed online bookmaker Zeturf, Ltd. to stop accepting bets on French horseracing. Zeturf resisted, arguing that Pari Mutel Urbain (PMU), the French company Zeturf competed against, constituted an illegal monopoly. Zeturf was hit with substantial fines and eventually forced to close by a French court (Mangion, 2005).

Recently, the United Kingdom, in a somewhat unexpected announcement, opted to move from an opaque policy to one very similar to that of Malta. The Gaming Act of 2005 (which will enter into full effect in 2007) will regulate online gambling in the UK for the first time. This act will serve as a draw for tax revenues (the amount of which were not explicitly laid out in the bill) and as a mechanism for “protecting British punters [players], preventing the young and vulnerable being sucked into addiction and keeping out organised crime” (Wheeler, 2006). Initially met with concern from other member states with similar interests but less market-friendly ways of providing for them, the idea of clear regulation has grown more attractive. Italy followed the UK in September 2006, when it announced adopting a model similar to the UK, collecting a 3% tax on annual revenues of online gaming providers licensed in Italy (Caldwell, 2006).

The lack of a common EU position on online gaming regulation has resulted in the heterogeneous array of regulatory schemes implemented on a state by state basis. This assortment of policies often results in clashes between member states, both political and legal. When the policies of two member states come into direct conflict, it is the European Court of Justice that acts as referee, establishing what path is most in line with the goals and policies of the EU. Currently, a series of ECJ case rulings come closest to expressing an EU position on how online gambling ought to be regulated. In the 1994 Schindler case, the court found that lotteries, given their particular moral, religious or cultural features, were justifiably regulated by member governments (“Her Majesty,” 1994, para. 60). The case involved the importation and marketing of German lotteries through the mail to the UK, where such activities were heavily restricted. The ECJ held that the UK’s restrictions were a barrier to the free movement of services, thus classifying lotteries as a service. The ECJ did

not, however, classify the UK's policy as discriminatory as all lottery providers were held to the same standard ("Her Majesty", 1994, para. 48). With an understanding of the potential for fraud and crime to enter the situation, as well as the nature of the activity encouraging a player to spend money, the ECJ gave credence to the argument that the activity has the potential to damage the individual and society. The court decided that member states were permitted to restrict the cross-border promotion of lottery activities, so long as their policies were in accordance with the appropriate sections of the EC treaty.

Two subsequent cases served to clarify and refine the provisions set out in the Schindler case. The 1999 Laara and 1999 Zanetti cases involved intermediaries of companies based in other EU states violating restrictive laws in another member state. In the Laara case, the Finnish Lotteries Act provided that games of chance could only be operated with proper Finnish state authorization, and then only for the collection of funds to support non-profit activity. Such authorization was restricted to only one operator per type of game nationally and as the Finnish affiliate of English slot machine operators, Mr. Laara was brought up on charges of operating without the proper licensing. In this instance, the ECJ held that casino games, as they applied to the Laara case, were comparable to lotteries and, in keeping with their Schindler ruling, that the prohibition on such activities was an unjust restriction on the trade of services. Like the Laara case, the Zanetti case involved an Italian citizen operating bookmaking services for a British firm in Italy and faced prosecution for not holding the appropriate state-granted license.

Both Laara and Zanetti refined the idea of policy proportionality as introduced by the Schindler ruling. That is, a state's policy in regulating gambling must be proportional to the social goals it tries to achieve. Essentially, a state can regulate remote gaming so long as it is not profiting from it. For example, a state can not use funds to put into their general budget, but funds can be used to sponsor social programs, such as community sporting clubs or addiction treatment programs, which are somewhat dependent on these funds (European Non-Governmental Sports Organization, 2006). The Anomar case, involving Portuguese restrictions on the use of slot machines, reaffirmed the proportionality principle and, while not drastically different from the holdings in the previous ECJ gaming cases, is relevant for illustrating constancy in ECJ rulings on acceptable gaming restrictions.

The Gambelli case and the recent Placanica ruling are the most recent instances of the ECJ rulings regarding online gaming. Gambelli, an Italian citizen, was part of a network of Italian agencies linked by internet to the British bookmaker, Stanley International Betting Ltd, which held a bookmaking license from the English government. Italian law, however, prohibits bookmaking without a license issued by the Italian government. The Gambelli case again upheld the idea that regulation cannot be born out of a desire to create revenue for the government. The court stated,

*"In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for that betting in order to justify measures such as those at issue in the main proceedings." (Criminal proceedings, para. 69)*

The Placanica case, handed down on March 6th, 2007, borrows heavily from the 2003 Gambelli ruling in its support of cross-border, commercial gaming enterprises. Placanica, also an Italian citizen, is one of three Italian operators working with the UK's Stanley

Leisure, Plc., collecting bets for Stanley’s operations in Italy. Much like Gambelli, a government issued license is required for such activities, but this is impossible to obtain given limitations placed on the number of licenses offered by the Italian state. The ECJ ruled that, “a member state may not apply a criminal penalty for failure to complete an administrative formality where, in breach of Community law, such completion is refused or rendered impossible by that member state” (“Court Rules,” 2007). The court reaffirmed that, “moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming” are grounds for restricting online gaming activities, but reiterated that such restrictions must still satisfy the proportionality principle previously established by ECJ rulings (O’Connor, 2007).

In short, a state must prove public order concerns in order for such restrictions to persist; financial gain of the state is not sufficient to restrict the free trade of services in this area and the state’s ability to regulate is not absolute or merely a foregone conclusion. States are furthermore prohibited from promoting the patronage of online gaming services they operate in order to increase their financial gain. These stipulations, while clearly articulated in ECJ case law, have not always directly resulted in policy revision by member states.

#### **ONLINE GAMING, EUROPEAN INSTITUTIONS & LIMITATIONS OF INTEGRATION THEORY**

Theory and theorists of European integration, while often derided as “less than constructive” (Puchala, 1999, p.318) with a tendency of “jumping upon one another’s attributed weaknesses while disregarding one another’s insights”(Puchala, 1999, p.318), can provide a solid framework to assess possible explanations as to why regulation is or is not formulated and carried out at the EU level. The phenomenon to “jump upon” one another, however, leads to a divide between adherents to one school and devotees of another, limiting the discussion of competing models in academic works and, in the case of online gaming, prohibiting a multi-dimensional understanding of the situation at hand.

To begin a discussion of EU theory, one must first ask why Europe is a region in the way it is. The obvious geographic explanations exist, although contemporary debates about where Europe “ends” as the European Union expands creates the need for deeper consideration. In *A World of Regions: Asia and Europe in the American Imperium*, Peter Katzenstein asserts that the world consists of “regions organized by America’s imperium,” (2005, ix) a concept he defines as the “conjoining of power that has both territorial and nonterritorial dimensions” (2005, 2). While his philosophical grounding is interesting, it is his construction of the different ways in which this response to American imperium manifests itself that is most directly relevant in the case of cultural regulation. “Europe,” Katzenstein writes, “illustrates with particular clarity the material, formal, and political aspects of regionalism” (2005, p.36). In a single sentence, Katzenstein has articulated the base assumption one must operate from when discussing the European Union: it is a formal regionalism that must remain that way to exist in the world today. One could argue that this is as much a result of a global economy as it is any American imperium, but Katzenstein’s insight rings no less true.

An addendum to the meta-EU discussion is the work on Regional Trade Agreements (RTAs) by sociologist Francesco Duina. Whereas Katzenstein describes the broader forces which bring states together in regional orientation, Duina narrows the debate slightly in his account of RTAs as a way of regions remaining distinct in the global marketplace. In classifying the European Union as an “interventionist” RTA, opposed to the “minimalist” example of NAFTA, Duina builds an argument that “historically, most markets have formed slowly over time in tandem with gradual adjustments in the world views of market partici-

pants. By contrast, the building of regional markets is a deliberate process where barriers to exchange are quickly removed” (2006, p.4-5). Highlighting that the creation of RTAs as an often rapid process intended to protect members from the pressures of the global economy or one another, Duina’s argument gives conflict born from EU attempts to regulate cultural norms a developmental context. While the peoples of Europe share some history, they are by no means the same and the belief that efforts to regulate closely held cultural norms would be accepted with no controversy is somewhat naive.

Katzenstein and Duina both provide a conceptualization of regionalism which accounts for the particular structure and legitimacy directives and ECJ rulings rest upon. Without the “formal” or “interventionist” approach taken by the peoples of Europe, the EU would not have any central control over policy and thus the tools of change under discussion would cease to be. Without this foundation to build upon, discussions of how or why the EU does or doesn’t regulate online gaming would be moot. This is a very basic concept but one that is important to establish when trying to apply theory to case studies, especially complex ones like online gaming regulation.

With an understanding of the means by which Europeans have organized themselves, the EU’s component parts and their operation become highly relevant. There are many prominent debates in international relations and political science about the nature of regions and their relation to the global economy, but for the purposes of discussing EU integration in the context of regulating culture, the ideas of institutionalism and intergovernmentalism are most relevant. The institutionalist perspective on EU integration, such as that put forth by Wayne Sandholtz and Alec Stone Sweet in their compilation, European Integration and Supranational Governance, argues that European institutions, such as the Parliament or European Court of Justice, become their own masters after a period of existence and drive further regional integration by their actions. The EU, according to the editors, “has transformed itself from a largely intergovernmental arrangement ... into a supranational polity” (1998, p. 135). Often called “neo-functionalism,” this theory of regional development is rooted in the idea of “spill-over,” where integration in one area (such as the coal and steel industries) would promote or cause integration in others. Jean Monnet, considered to be the architect of the organization which the modern EU is built upon, the European Coal and Steel Community (ECSC), believed that such a process was not only possible but would lead to peace and stability on the European continent.

Institutionalism is generally contrasted with the concept of intergovernmentalism, as argued by Andrew Moravcsik in his book A Choice for Europe. Moravcsik and other intergovernmentalists argue that while supranational EU bodies have a role in the maintenance of a unified Europe, the actual process of integration is only achieved when the national interests of independent states converge to drive it. As Moravcsik writes of the formation of the EU, “The integration process did not supersede or circumvent the political will of national leaders; it reflected their will” (p. 4). As these theories relate to the regulation of online gambling, the intergovernmentalist approach finds more credence than its institutionalist or neo-functional counter parts. If institutionalism was wholly accurate, situations similar to that of transnational online gambling, the regulation of television broadcasting services via an EU-wide directive (Directive 97/36/EC), for example, would have spilled over and promoted regulation of remote gaming.

Mechanisms such as EU directives and ECJ rulings, the means by which the EU establishes unified policies, find special relevance in this theoretical debate. The position one

takes on how policy is controlled—as to whether the EU itself or member states sit in the driver’s seat— has direct effect on how the construction of the EU took place and how it best operates. An institutionalist, for example, would view the absence of an EU directive regulating online gaming not as a show of member state resistance to proposals, but out of a lack of necessity assessed by EU structures as well as potentially damaging to the status and legitimacy of the EU. By considering the EU itself as a self-interested rational actor, the role of member states is unjustifiably diminished. In contrast, an intergovernmentalist would view the resistance to a directive or ECJ rulings as member states expressing their political will, disparate as they may be, and thus determining the course of integration in that forum.

Approaching the regulation (or lack thereof) of online gaming from a pragmatic implementation angle, an examination of Maria Green Cowles, James Caporaso and Thomas Risse’s “goodness of fit” model is helpful. The basic premise is simple: There may be a level of disconnect between those measures passed down from the European Union and what exists as law or norm in a given member state. The amount to which the policies differ creates a proportional amount of “adaptational pressure.” Cowles, Caporaso and Risse give two ways to determine the amount of adaptational pressure in a given situation.

*“First, adaptational pressure might be low, and not much structural adaptation is required. Actors easily incorporate EU institutions and regulations in their domestic ways of doing things. An institution is unlikely to resist changes in its environment of these are consistent with its own constitutive principles... If adaptational pressures are very high, European institutions seriously challenge the identity, constitutive principles, core structures and practises of national institutions” (2001, 8)*

Resistance to regulating online gaming at the EU level is often argued to be a result of its status as a “politically highly sensitive” (“Ombudsman”, 2006) issue. In a situation where the policies regulating an industry— here, online gaming— differ greatly country to country, there is a strong argument to be made that a substantial amount of adaptational pressure would exist for certain member states if the EU were to take action. From an institutionalist perspective, this would matter only in the context of possible injury done to the EU’s power and legitimacy. Intergovernmentalists, however, would view a policy creating any amount of adaptational pressure as a flag to expect resistance from member states and no movement in that area of regulation.

With theories as to EU organization addressed, it is important to also examine work on cultural norms and their relation to EU regulation. Those who write about the regulation of culture in the EU utilize a broad definition of the term, such as Paulette Kurzer in Markets and Moral Regulation. Kurzer’s definition of culture includes, “everyday socialization, beliefs, norms, institutions and common behavior in light of the challenges brought by European institution and market building” (2001, p.1). Kurzer’s work connects the ideas of cultural change and so-called “moral regulation” in the latter’s ability to promote the former. As Kurzer writes, “variations in morality norms shed light on some of the most important aspects of state and national identity” (2000, p.1) and proceeds to assess “national governance of socially sensitive policies” (2001, p.1). Kurzer roots her work in institutionalist theory, however, a shortcoming that substantially limits the applicability of her framework. In examining only top-down, EU-to-member state change, Kurzer is unable to address how EU superstructures and their implements, such as ECJ rulings, are impeded by attempts at issuing moral regulations where cultural norms create high adaptational pres-

sure. As Kurzer writes, “the likelihood of adopting new European standards is low unless a ‘goodness of fit’ exists” (2001, 9).

The interplay between broader theories of EU integration and formulation of cultural norms is clearly seen in discussion of remote gaming policy. Kurzer argues that market integration amongst EU states creates, “an ever so slight convergence of different styles of thought and actions,” (2001, p.ix) as a result of the “loss of national sovereignty in the cultural sphere” (2001, p.ix). In Kurzer’s framework, the EU drives cultural change, although at a relatively measured pace. The absence of an EU directive regulating online gaming as a result of member state resistance, however, finds more explanation in the intergovernmentalist interpretation of integration practices. Kurzer’s approach is therefore able to account for some elements of the online gaming case, such as regulatory changes in the UK and Italy suggesting shifting norms, but not larger issues of disconnect between EU mechanisms and their ability to affect cultural norms and policy change. Under Kurzer’s model, ECJ rulings would have led to a shift in policy derived from a larger change in cultural norms among EU member states, something that has only occurred (as in the UK and Italy) when countries in question see a policy shift in their best interest. Kurzer constructs a black box of sorts, explaining the input and eventual result, but the institutionalist basis cannot support inquiry about the interim process of change.

The circumstances which surround the debate over online gaming regulation are an instructive tool in filling in the holes in Kurzer’s philosophical framework. In *Gambling Politics*, Patrick Pierce and Donald Miller examine “morality policy” in an attempt to study the politics of gambling and the resulting policies formed. Although Pierce and Miller focus on gambling politics in the U.S., their definitions and approach are still readily applicable in the European context. The authors build their analysis around the “seminal insight” (2004, p.4) of American political theorist Theodore Lowi that policies enacted determine the nature of political conflict that will surround them. Their operational definition of “morality policy” is taken from work by Kenneth Meier,<sup>6</sup> where it is defined as, “at least one advocacy coalition involved in the debate defines the issue as threatening one of its core values” (Meier, 1999, p. 4). Pierce and Miller provide analytical tools in assessing European reactions to moral policy, something that greatly overlaps with the regulation of cultural norms in discussions of online gaming. If a state feels that the European Union is undermining its ability to provide or protect the citizens of that state, resistance to those policies is inevitable. “Core values, first (or moral) principles, and religious values,” the authors argue, “generate a political dynamic very different from that generated by the details of tax policy... they generate passion and emotion rather than reason” (2004, p.32). Pierce and Miller’s analysis also aids in answering the larger “who cares” element of any discussion of online gaming. While an economically substantial industry, one can justifiably ask why online gaming regulation (or the absence of it) even matters. In assessing that, “morality policies occasion higher levels of citizen participation than other kinds of policies” (Pierce and Miller, 2004, p.33), the authors present an explanation of why states do care, rooted in a less rational process than Kurzer and other EU integration theorists suggest. While the initiation and culmination of forming policy to regulate online gambling may be feasibly explained as a rational process of state self interest, the Pierce and Miller approach is able to account for any apparent subversion of EU structures in the process.

In Pierce and Miller’s approach, the context for arguments like access to online gaming services may tear at a state’s moral fabric or threaten order is clearer. While Kurzer and

the institutionalists can account for the eventual results of such arguments, they are unable to explain the process of reaching those ends like Pierce and Miller's work does. As a document which must be agreed upon by EU governing bodies, a directive is subject to multiple levels of assessment, known as readings, where amendments are both possible and likely. In the present analytical framework, the process would be understood as either the EU acting in a decisive capacity (institutionalist) or states jockeying for polices which most reflect their self interest (intergovernmentalist) without much attention to how the policy being discussed may itself effect the process. The exemption of online gambling from the services directive was a decision taken at the second reading of the proposal, similar to the "mark-up" phase in American governance, wherein competing interests in the European Parliament can lobby for such an action. This chain of events supports the intergovernmentalist approach while also suggesting that the policy proposal was too divisive and, in removing a state's ability to regulate online gaming as it saw fit, had too many implications for the core values which states center their governance philosophy around. The furor created at the prospect of online gaming regulated at the EU level was considerable, with groups as disparate as the World Lottery Association and EU Ministers of Sport arguing that the industry be left out of any services directive ("Europe excludes," 2006; "EU sports," 2006).

Finally, the Advocacy Coalition framework proposed by Paul Sabatier and Hank Jenkins-Smith warrants its own discussion. A widely applied method of assessing the impact of policy analysis on policy formation, the advocacy coalition framework operates on three basic premises. The first premise is, "that understanding the process of policy change—and the role of policy-oriented learning therein—requires a time perspective of a decade or more" (Sabatier, 1988, p.131). The second premise contends that, "the most useful way to think about policy change over such a time span is through a focus on 'policy subsystems,' i.e. the interaction of actors from different institutions interested in a policy area" (Sabatier, 1988, p.131). The third and final premise argues, "public policies (or programs) can be conceptualized in the same manner as belief systems, i.e. as sets of value priorities and causal assumptions about how to realize them" (Sabatier, 1988, p. 131). The Advocacy Coalition framework and its emphasis on "policy subsystems" as a source of understanding in policy formation adds another dimension to the study of remote gaming regulation. Looking to groups like the Remote Gaming Association or the EU Ministers of Sport and the absence of any broad coalitions therein is instructive as to the future of the debate. Without any concrete and coordinated policy initiatives to end conflict over online gaming, parties on both sides will see the issue perennially reappear. Add to that the expected exponential financial growth—\$25 billion globally by 2010 (Shadegg, J., 2006), with Europe as the fastest growing and most lucrative market—and interested actors will have to make more coordinated and substantive efforts for their interests to prevail.

The Advocacy Coalition framework is helpful up to a point when assessing both the formation of policy relating to online gaming regulation as well as the impact the process has on EU institutions. First, the framework is designed to assess policy analysis and the impact that has on policy formation. There has been only a single comprehensive study of online gaming in the EU and its overall significance, undertaken by the Swiss Institute of Comparative Law (SICL). The Swiss study was commissioned by the EU and completed and released on October 12, 2006, more than a year after the original September 2005 release date ("Study On," 2006). The study's main conclusion was that, "while pursuing broadly similar aims the national laws and regulations vary considerably and often lead to

barriers to the freedom to provide services and the freedom of establishment that are incompatible with Community law” (European Commission, 2006). Without a long term time frame to reflect from and, given that the EU Services Directive was approved after this information was released, the questionably influence of policy analysis in the EU renders the Advocacy Coalition framework only moderately applicable or useful at this point in the study of online gaming regulation. The third premise, however, complements the work of Kurzer and Pierce and Miller in the context of European mechanisms of change. The lack of an overarching conceptualization of online gaming is an over looked but significant fact. The borderless nature of the internet will eventually force EU member states to either adopt a virtual ban on online gaming as the US has done or shift cultural norms enough to where policy harmonization via and EU directive is demanded by member states. In this sense, elements of the advocacy coalition model are both useful and predictive.

## CONCLUSION

The European Union represents regional integration undertaken in a very unique fashion. The result of a continent tiring after several hundred years of near-constant warfare, the EU is an important experiment in regionalism. The success of the EU may be attributed to any number of specific actions, individuals or policies, but the distinct structures which constitute the EU discussed in this paper—the European Parliament, Commission, EU Council of Ministers and the European Court of Justice— are now inarguably legitimate political entities. The debate over whether these entities are self-motivated or guided is, however, an area where debate still reigns. Examination of prominent literature on the subject of European integration and moral policy, coupled with the case study online gaming regulation provides, suggests that the intergovernmentalist approach is the most accurate in understanding cultural regulation in the EU.

The truly fascinating thing provided by the study of online gaming regulation in the EU, however, is not to reaffirm one integration theory or another. It is instead the suggestion, imbedded in the facts of the situation and the limited analysis current literature provides for, that a bridging of theories is more important in understanding the regulation of cultural norms or the implementation of so-called moral policy. The work that has been done up to this point on European Union regulation and its implications for cultural norms, namely that of Paulette Kurzer, only explains some aspects of the online gaming situation. If European institutions create subtle shifts in norms by decreasing protective barriers between member states, as Kurzer’s institutionalist perspective argues, then online gaming would be regulated by a services directive at this point in time. Even if one were to view the recent policy shifts in some EU member states as supporting Kurzer’s approach, this would still not explain how the policy shift actually happened, only accounting for the fact that it did. Using a blend of intergovernmentalism and institutionalism coupled with Kurzer’s approach to cultural change in the EU and the work of Pierce and Miller, a more complete picture of what keeps online gaming in a state of limbo emerges. Kurzer is right that there is an eventual “convergence” (2001, p.ix) of cultural norms resulting from EU integration and common market practices, but Pierce and Miller are able to fill in why resistance to an otherwise logical policy move requires that convergence. If the EU had included online gaming in its services directive, then the actions of the UK and Italy would support Kurzer’s model wholly, but online gaming was exempted from those guidelines. Real policy change occurred only after member states assessed that the benefits of a form of regulation in keep-

ing with ECJ rulings outweighed any associated costs accrued therein, with policy debates comparing EU integration principles against the importance of maintaining core state values. Such actions support the proposal for intuitionism and intergovernmentalism to be seen less as competing theories than as two sides of the same coin.

This synthesis of theories also best explains the interplay between EU mechanisms of change and cultural regulation. The dismissal of ECJ rulings by member states is obvious, necessitating inquiries from the Commission into individual state approaches to online gaming regulation more than a decade after the first decision was handed down. The recent request for reports from several EU states detailing their online gaming policies further highlights the shortcomings of current EU integration theory in accounting for all elements of cultural regulation. No EU body is willing to risk stepping on the jurisdictional “toes” of individual member states in the wake of the failure of the EU constitution. With the European Union already facing fracture, using a directive to harmonize policy may “push” the cultural change Kurzer speaks of, but would not be politically feasible in an atmosphere where states already question the centralization of authority in the EU and angle to retain more domestic control of policy formation. The disregard given to ECJ rulings could be considered a precursor to the Constitution’s rejection, with states valuing their core values over those set out in support of EU integration. Here, understanding the nature of debate surrounding moral policy, as Pierce and Miller discuss, reaffirms that a directive regulating online gaming would find greater incidence of activism against such a policy. This can take the form of states refusing to change policy in accordance with EU standards, as it has with ECJ rulings, still endangering the foundation of mutual respect which the EU is found upon.

In short, the European Union has not undermined itself, but member states have opted to endorse diversity rather than policy unity in the case of online gaming. As a result of the unique space occupied by cultural issues in discussions of EU regulation, existing frameworks for policy and situational analysis are not sufficient to explain the case of online gaming. Instances of conflict between member states in approaches to online gaming regulation have occasioned legal cases in both national court systems and in the European Court of Justice. Despite rulings from the ECJ consistent in their support for a model of regulation in step with the principles of the common market, no policy harmonization will occur until the cultural norms in member states have shifted sufficiently to allow for such open models of gaming regulation. Employing a synthesis of existing academic work best explains the nuances of cultural regulation as well as the effect these policies have on the operation of EU mechanisms of change. The European Union was conceived as individual states coming together in voluntary union and, so long as the core principles of member states are compromised or threatened, states will fall back on the independence enshrined in the documents establishing the European Union.

## NOTES

1. “Gaming” is the term preferred by the industry itself, but “online gaming” and “online gambling” should be considered interchangeable for the purposes of this paper. Many authors now prefer the term “online gambling” as to distinguish the industry from online mutli-player video games, such as World of Warcraft or Starcraft.
2. “Traditional” here refers to actual physical casinos, often called “brick and mortar” op-

- erations in EU documents.
3. Full text is available [http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html](http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/htm/C_2002325EN.003301.html)
  4. This document is also known as the “Maastricht treaty,” for the city in the Netherlands it was signed in.
  5. Denmark, Finland, Germany, Italy, the Netherlands, Hungary and Sweden
  6. In this same vein, see the work of Christopher Mooney, (November 2000) “Policy Development, Social Learning and Gambling Policy in the American States.” [Paper presented at the annual meeting of the Southern Political Science Association, Atlanta]; (2001), “The Public Clash of Private Values” Christopher Mooney, ed., The Public Clash of Private Values: The Politics of Morality Policy. Chatham, NJ: Chatham House.

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