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Risk, Charity, and Boundary Disputes: The Liberalization and Commercialization of Online Bingo in the European Union

DONAL CASEY*

Le bingo en salle a toujours été perçu comme une forme sociale de jeu à faible risque. On y joue souvent lors des collectes de fonds pour une œuvre de bienfaisance et, dans de nombreux pays, il est associé aux causes honorables et à la communauté, plutôt qu'au risque ou au profit. Ces caractéristiques distinctives ont forgé la réglementation sur le bingo dans bien des administrations. Toutefois, les progrès technologiques ont transformé la nature de ce jeu, qui est maintenant accessible en ligne, et ont remis en cause les approches réglementaires traditionnelles. Dans cet article, je présente l'évolution de la réglementation du bingo en ligne afin de dégager ce que nous pouvons apprendre sur les nouvelles façons qu'adoptent les pays pour gouverner le jeu spéculatif sous l'angle du risque. Du même coup, je propose une nouvelle interprétation de la propension croissante des États membres de l'UE à gouverner le jeu en fonction du risque. À mon avis, la légalisation et la libéralisation du bingo en ligne sont une forme de gouvernance entrepreneuriale dictée par des marchés libéralisés et l'abolition des frontières nationales par la technologie.

Land-based bingo has traditionally been perceived as a low-risk social form of gambling. The game is often run for purposes of charitable fundraising, and in many countries bingo is associated in good causes and community rather than risk or profit. These distinguishing characteristics have shaped bingo's regulation in many jurisdictions. However, technological advances have changed the nature of the game as it moved online and challenged traditional approaches to regulation. In this paper, I document the evolution of online bingo regulation in order to explore what we can learn about the changing ways in which states govern speculative play through frameworks of risk. In so doing, I offer a new reading of the growing propensity of EU Member States to govern gambling through risk. I argue that the legalisation and liberalisation of online bingo is a form of enterprising governance, driven by liberalised markets and the erosion of national borders by technology.

I think risk is the ... overarching theme now ... because I think if you are going to really get to the nub of what's important within the regulatory framework ... is to talk about risk and the

* I wish to thank the interviewees who generously gave of their time to speak with us about their experience of bingo regulation. I would like to acknowledge and thank Oscar Alvarez-Macotella who conducted a number of the interviews mentioned in this article and was a research associate on the project. I am enormously grateful to Kate Bedford for helping me develop the arguments presented in this paper. The article benefited greatly from the comments and suggestions of two anonymous reviewers, and was significantly improved by the careful reading and editing of Sonia Lawrence and the editors at the Journal of Law and Social Policy. All remaining errors are mine.

appetite for risk. How much will they permit in order to have a functioning economic model?¹

IN THIS PAPER, I DOCUMENT THE EVOLUTION OF ONLINE BINGO REGULATION in the European Union (EU) from the game's emergence in the late 1990s. By foregrounding online bingo in an analysis of gambling regulation, I explore what we can learn about the changing ways in which states govern speculative play through frameworks of risk. Building upon and developing the work of law and society scholars, as well as critical gambling scholars, I offer a new reading of the growing propensity of EU Member States to govern gambling through risk, in the sense that risk orientates how states view, imagine, and deal with problems.² I argue that the legalization and liberalization of online bingo is a form of enterprising governance, driven by liberalized markets and the erosion of national borders by technology. Technology not only challenges traditional approaches to gambling regulation, it allows states to embrace the economically productive nature of risk taking.

When you think of bingo, it is unlikely that risk is the first word that comes to mind. Bingo is generally not seen as a form of risky consumption. Indeed, Kate Bedford argues that bingo has a “liminal status as not real gambling,” but is “a site of social interaction, community, and even care.”³ As a “key form of charitable gambling,”⁴ land-based bingo has traditionally been associated more with charitable fundraising and good causes than risk, private profit, and commercial gambling. It is also a game rooted in national, local, and community environments.⁵ These characteristics have shaped the game's regulation in many countries.

However, as I argue elsewhere, commercial operators and transnational service providers have commodified, shaped, and driven bingo in its online form.⁶ These organizations develop and supply the game's technological infrastructure of software, platforms, networks, and plug-ins, which are relied upon by commercial, state, and non-profit gambling enterprises. Online bingo, like most forms of online gambling, partly remains an offshore industry that employs technology to penetrate national borders and reach into territories to acquire players and extract profits. In a sense, technology has rendered national borders porous. While these transformations have challenged the perception and regulation of online bingo in many EU

¹ Interview EU-13, 40 interviews were conducted with key stakeholders in 11 EU countries between 2015-2016. Further references to these interviews will appear as in-text citations. Transcripts of all interviews are on file with author.

² Pat O'Malley, *Risk, Uncertainty and Government* (London: GlassHouse, 2004); Gerda Reith, “Techno Economic Systems and Excessive Consumption: A Political Economy of ‘Pathological’ Gambling” (2013) 64:4 *The British Journal of Sociology* 717; Sytze Kingma, “Gambling and the Risk Society: The Liberalisation and Legitimation Crisis of Gambling in the Netherlands” (2004) 4:1 *International Gambling Studies* 47; James F Cosgrave, “Governing the Gambling Citizen: The State, Consumption, and Risk” in James F Cosgrave & Thomas R. Klassen, eds, *Casino State: Legalized Gambling in Canada* (Toronto: University of Toronto Press, 2009) 46.

³ Kate Bedford, “Getting the Bingo Hall Back Again? Gender, Gambling Law Reform, and Regeneration Debates in a District Council Licensing Board” (2011) 20:3 *Soc & Leg Stud* 369 at 376.

⁴ Kate Bedford, “Regulating Volunteering: Lessons from the Bingo Halls” (2015) 40:2 *Law & Soc Inquiry* 461 at 469.

⁵ Rachael Dixey, “Bingo in Britain: An Analysis of Gender and Class” in Jan McMillen, ed, *Gambling Cultures: Studies in History and Interpretation* (New York: Routledge, 1996); Bedford, *supra* note 3; Jean-Claude Moubarac, N. Will Shead & Jeffrey L Derevensky, “Bingo Playing and Problem Gambling: A Review of Our Current Knowledge” (2010) 24 *Journal of Gambling Issues* 164; Bedford, *supra* note 4.

⁶ Donal Casey, “The DNA of Bingo: Charity and Online Bingo” in Michael Egerer, Virve Marionneau & Janne Nikkinen, eds, *Gambling Policies in European Welfare States: Current Challenges and Future Prospects* (Cham, Switzerland: Palgrave Macmillan, 2018) 153.

Member States, so too has bingo's traditional position as a low-risk lottery style game that is closely associated with charitable fundraising and good causes.

This paper draws upon extensive research undertaken for The Bingo Project.⁷ My analysis and findings are based upon forty interviews with key stakeholders in eleven countries, legal cases, policy documents, and political debates at the EU and national levels. The paper unfolds in three parts. First, I introduce the conceptual tools developed by law and society scholars and critical gambling scholars to understand and analyze the ways in which states seek to govern through risk (Part I). From here, I examine how online bingo regulation in many EU Member States has become focused on risk minimization, while governments simultaneously embrace risk through opening and encouraging enterprise, competition, and innovation in gambling markets (Part II).⁸ Finally, I investigate gambling liberalization in Denmark, Sweden, Ireland, and the Netherlands (Part III). I reveal how these processes of liberalization are punctuated by boundary disputes over sector ownership of the game. In these boundary disputes, bingo's formulation as a commercial commodity jars with its formulation as a means of fundraising for good causes. The register of these boundary disputes has shifted from one of charity and public benefit to one of risk, private profit, and commercial industry. Tracing these moves illuminates the changing ways in which bingo is imagined as it moves online.

I. GOVERNING GAMBLING THROUGH RISK

A. GOVERNING THROUGH RISK

As socio-legal scholar Pat O'Malley notes, "risk has become a much more salient framework of government in the past half century."⁹ This shift is important for socio-legal scholarship, O'Malley observes, "[B]ecause to regard a problem in terms of a framework of risks changes both the focus and locus of government."¹⁰ At the most general level, governing through risk seeks to "[bring] the future into the present" by identifying "a future condition as being more or less probable" and rendering it governable.¹¹ Such future conditions may concern individuals, collectives, or populations, and relate to a diverse range of events such as illness, death, injury, harm, damage, or crime. Here, governing through risk involves "diverse 'configurations of risk'" and "forms of risk-based government" that have their own rationalities, techniques, bodies of knowledge, and technologies.¹² These configurations of risk-based governance create new subjectivities, redefine relationships, and assign new responsibilities.¹³

Governing through risk is closely linked with practices that of assigning responsibility for managing risks. More specifically, scholars have noted the changing ways in which states

⁷ See Kate Bedford et al, "The Bingo Project: Rethinking Gambling Regulation" (2016) University of Kent, online: <kent.ac.uk/thebingoproject/resources/Bingo_Project_report_final.pdf> [perma.cc/HYY9-9LDG]; The Bingo Project, online: <kent.ac.uk/thebingoproject/index.html> [perma.cc/HAH7-RGKL].

⁸ Tom Baker & Jonathan Simon, eds, *Embracing Risk: The Changing Culture of Insurance and Responsibility* (Chicago: University of Chicago Press, 2002).

⁹ Pat O'Malley "Governing Risks", (2009) Legal Studies Research Paper No 09/86, online: <ssrn.com/abstract=1473553> at 4.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² O'Malley, *supra* note 2 at 21.

¹³ *Ibid* at 8–9.

govern risk through the responsabilization of individuals to manage their own risks, and how these changes link to the politics of neoliberalism. As O'Malley explains:

[N]eoliberalism increased the focus on individual responsibility and sought to wind back the influence of the welfare state as a means of exposing subjects to risks. In neoliberal visions exposure to risk made subjects more self-reliant, entrepreneurial, "active on their own behalf", less "dependent" and thus "more free". The state was to change its role from managing many harmful risks, for example through social insurances, to "empowering" individuals to manage their own risks, again all in the name of greater freedom.¹⁴

This "new prudentialism" "throws back" responsibility for managing risks from the state to individuals themselves, driven by neoliberalism's central concerns with shrinking the state, the belief in markets, and the affirmation of individual freedom, responsibility, and choice.¹⁵

The "prudent subjects of neo-liberalism" are not reliant upon the state for active protection from risk or harm, but rather "practise and sustain their autonomy by assembling information, materials and practices together into a personalized strategy that identifies and minimizes their exposure to harm."¹⁶ The privatization and individualization of risk creates enterprising subjects, "free to make choices and to take [responsibility]."¹⁷ However, the "'prudent' subjects of neo-liberalism are simultaneously exhorted to become 'risk takers'."¹⁸ These active citizens are expected to be "'responsible-risk takers' who must govern the effects of their risks on themselves and others."¹⁹ They are exhorted to embrace risk, but at the same time expected to act rationally to avoid risks and minimize harms, with the result that irresponsible risk-takers are moralized as incapable of self-governance.²⁰ With this, you begin to see what Mitchell Dean calls a "division between active citizens (capable of managing their own risks) and targeted populations (disadvantaged groups, the "at risk," the high risk) who will require intervention in the management of risks."²¹

Risk, however, is not always something that is viewed as a negative or "constituted in terms of restrictions on freedom in the name of harm reduction."²² As Caitlin Zaloom points out, "[R]isk reaps reward."²³ Risk can be productive, whether for individuals, collectives, organizations, or states. In their collection *Embracing Risk*, Tom Baker and Jonathan Simon note that while risk is generally seen as "something to be avoided, spread or otherwise managed, not something to be encouraged or embraced," "risk today is ... also about

¹⁴ Pat O'Malley, "Governmentality and the Analysis of Risk" in Adam Burgess, Alberto Alemanno & Jens Zinn, eds, *Routledge Handbook of Risk Studies* (New York: Routledge, 2016) 109 at 113.

¹⁵ Pat O'Malley, "Risk, Power and Crime Prevention" (1992) 21:3 *Economy and Society* 252.

¹⁶ Pat O'Malley, "Uncertain Subjects: Risks, Liberalism and Contract" (2000) 29:4 *Economy and Society* 460 at 465.

¹⁷ O'Malley, *supra* note 2 at 8.

¹⁸ O'Malley, *supra* note 16 at 465.

¹⁹ O'Malley, *supra* note 2 at 8.

²⁰ Mitchell Dean, *Governmentality: Power and Rule in Modern Society*, 2d ed (London: Sage, 2010) at 221; O'Malley, *supra* note 2 at 76; Deborah Lupton, *Risk*, 2d ed (New York: Routledge, 2013) at 90.

²¹ Dean, *supra* note 20 at 195.

²² Kelly Hannah-Moffat & Pat O'Malley, "Gendered Risks: An Introduction" in Kelly Hannah-Moffat & Pat O'Malley, eds, *Gendered Risks* (New York: Routledge-Cavendish, 2007) 1 at 23.

²³ Caitlin Zaloom, "The Productive Life of Risk" (2004) 19:3 *Cultural Anthropology* 365 at 365.

opportunity.”²⁴ The downward devolution of risk from states to individuals shows how neoliberal political rationality valorizes “responsible risk-taking” and the individual embrace of risk.²⁵ Here, risk is seen as productive for individuals—risk “must be valued and made salient, as the source of profit and the root of enterprise and self-reliance.”²⁶ States too embrace risk and uncertainty, not only through the perceived benefits of the downward devolution of risk to individuals, but also through enterprising governance that seeks to harness potential economic growth and profit from opening markets, promoting innovation and entrepreneurship on liberalized markets, and seizing the opportunities from uncertainties and risk of free markets.

B. GOVERNING GAMBLING THROUGH RISK

Beginning in the 1980s, states in North America, Australasia, and Europe liberalized gambling regulations.²⁷ Markham and Young note, “[i]t is no coincidence that gambling liberalisation occurred concurrently with the ascendance of the neoliberal economic project, with its emphasis on deregulation and free markets.”²⁸ Neoliberalism’s deregulatory agenda drove the liberalization of gambling markets, underpinned by its belief in competitive markets and its central concern with shrinking the state. Further to this, Gerda Reith argues that neoliberal policies of low taxation, “created a revenue vacuum into which gambling funds appear as an attractive political solution to states unwilling to levy such unpopular measures on voting populations.”²⁹ With this, gambling markets expanded as regulation was rolled back to allow “for ever-larger and more concentrated forms of games of chance” to generate private profit and tax revenues for states.³⁰ As markets liberalized and expanded, commercial gambling proliferated. The emergence of the gambling industry and the wave of gambling liberalization since the 1980s have contributed to a shifting problematization of gambling.

We can view gambling through the prism of risk in two ways. Gambling can be seen as the consumption of risk where “risks are integral to the consumption experience.”³¹ Gambling is also a form of risky consumption that entails unwanted risks of individual and social harm.³² As Reith points out, “[g]ambling has always been regarded as problematic, although the precise nature of the problem it presents varies according to sociohistorical context and cultural climate.”³³ While once viewed as an unproductive vice, gambling is now seen as economically

²⁴ Baker & Simon, *supra* note 8 at 20.

²⁵ O’Malley, *supra* note 2 at 76.

²⁶ Pat O’Malley, “Imagining Insurance: Risk, Thrift, and Life Insurance in Britain” in Tom Baker & Jonathan Simon, eds, *Embracing Risk: The Changing Culture of Insurance and Responsibility* (Chicago: University of Chicago Press, 2002) 97 at 110.

²⁷ Reith, *supra* note 2.

²⁸ Francis Markham and Martin Young, “‘Big Gambling’: The Rise of the Global Industry-State Gambling Complex” (2015) 23:1 *Addiction Research & Theory* 1 at 2.

²⁹ Reith, *supra* note 2 at 723.

³⁰ *Ibid.*

³¹ Cosgrave, *supra* note 2 at 46; Stephen Lyng, ed, *Edgework: The Sociology of Risk-Taking* (New York: Routledge, 2005); Sytze F. Kingma, “Introduction: Global Gambling” in Sytze Kingma, ed, *Global Gambling: Cultural Perspectives on Gambling Organizations* (New York: Routledge, 2010) at 6; Reith, *supra* note 2 at 725.

³² Cosgrave, *supra* note 1 at 47; Gerda Reith, “On the Edge: Drugs and the Consumption of Risk in Late Modernity” in Stephen Lyng, ed, *Edgework: The Sociology of Risk-Taking* (New York: Routledge, 2005) 227.

³³ Gerda Reith, “Gambling and the Contradictions of Consumption: A Genealogy of the ‘Pathological’ Subject” (2007) 51:1 *American Behavioral Scientist* 33 at 33.

productive for states, and as a legitimate form of leisure for individuals, albeit as a form of leisure that entails risks of unwanted harms that must be governed.³⁴

Sytze Kingma has outlined the emergence of what he calls a “risk model” of gambling regulation.³⁵ In this model, gambling is positioned as legitimate commercial entertainment that is economically productive for the state, but which produces risks of addiction and crime that must be governed. Kingma contrasts this approach to an “alibi model” of regulation where gambling is still seen as “intrinsically controversial,” but legalized to channel gamblers away from illegal markets.³⁶ In the “alibi model” of regulation, states restrict the exploitation of gambling for private profit by constituting gambling markets with state monopolies and non-profit organizations, and allocating gambling revenues “to social interests, in terms of welfare, sports and other ‘just causes’.”³⁷ The legalization and liberalization of gambling be it partial or total, embodies different ways in which the enterprising state embraces the risk of gambling markets. Here, gambling, is “put to work” and viewed as “economically productive for the state,”³⁸ whether through the enterprise of state monopolies, non-profit organizations, or the gambling industry.

As states legalize and liberalize gambling markets, they are confronted not only with the productive nature of risk, but also unwanted risks. One category of negative risk is market risk—risks that spring from the competitive forces of markets.³⁹ For example, where states operate in closed markets, they must compete with offshore online gambling operators. States also face regulatory competition when they liberalize and regulate competitive gambling markets. James Cosgrave and Thomas Klassen argue that deregulation occurs in response to these market risks as states seek to compete with offshore gambling operators or attract commercial operators to their markets.⁴⁰ The legalization and liberalization of gambling markets is only the starting point for states’ embrace of risk. As markets develop, states respond to market risk through deregulation to make their gambling markets and offers attractive and competitive.

The neoliberal affirmation of individual freedom, choice, and responsibility has been central to how states govern gambling through risk. The neoliberal subject of the “responsible risk-taker” is projected onto liberalized gambling markets as the responsible gambler—the gambling subject “required to consume, desire and spend in order to demonstrate responsible citizenship – but not too much.”⁴¹ With the normalization of gambling, the subject of “the gambler as profligate, wasteful, immoral, irreligious or unproductive” is replaced by the “responsible risk-taker.”⁴² Responsible gamblers are expected to manage and rationally avoid risks arising from their consumption of gambling commodities, aided and enabled by the state

³⁴ Gerda Reith, “Pathology and Profit: Controversies in the Expansion of Legal Gambling” in Gerda Reith, ed, *Gambling: Who Wins? Who Loses?* (Amherst, NY: Prometheus Books, 2003) at 15 & 21; O’Malley, *supra* note 2 at 99; Cosgrave, *supra* note 2 at 47; Reith, *supra* note 33; Gerda Reith, *The Age of Chance: Gambling in Western Culture* (New York: Routledge, 2002).

³⁵ Kingma, *supra* note 2 at 49.

³⁶ *Ibid* at 49–50; see also Alan Littler & Johanna Järvinen-Tassopoulos, “Online Gambling, Regulation, and Risks: A Comparison of Gambling Policies in Finland and the Netherlands” (2018) 30 *Journal of Law & Social Policy* 94.

³⁷ *Ibid* at 49–50.

³⁸ Cosgrave, *supra* note 2 at 47.

³⁹ James F. Cosgrave & Thomas R. Klassen, “Gambling Against the State: The State and the Legitimation of Gambling” (2001) 49:5 *Current Sociology* 1 at 12.

⁴⁰ *Ibid* at 12.

⁴¹ Reith, *supra* note 2 at 733.

⁴² Cosgrave & Klassen, *supra* note 39 at 7–8.

to make informed choices. However, the individualization and privatization of risk also creates a target population that is unable to moderate their consumption, at risk, and in need of intervention.⁴³ Here, the problem gambler and the pathological gambler emerge in counterpoint to the responsible risk-taker. They are made visible through configurations of risk-based government that rely on the interplay between clinical and epidemiological approaches to risk.⁴⁴ For example, technologies of measurement such as the South Oaks Gambling Screen render the problem gambler and the pathological gambler visible.⁴⁵ In doing so, risk-based approaches to governance make problem gambling governable and define the targets of gambling regulation: the problem gambler, the pathological gambler, and the recreational gambler.

In these ways, socio-legal research into the diverse and changing ways in which states govern through risk has been carried forward by critical gambling scholars in their examination of the liberalization of commercial gambling around the world. I seek to build upon these bodies of scholarship in what follows. My goal in this research is to develop the socio-legal and critical gambling scholarship on the growing propensity of states to govern through risk. I ask: What can we learn about how states govern speculative play through frameworks of risk by foregrounding online bingo in such an analysis? How do states govern online bingo through risk? How do states embrace risk through their regulation of online bingo markets? Why is it that online bingo has become a focal point of contestation in processes of gambling liberalization? What does this tell us about how bingo is imagined as it moves online? It must be remembered that land-based bingo is generally seen as a low-risk form of entertainment. In many places it is more closely associated with charity than commercial gambling and private profit, and bingo is a form of gambling rooted in local and national environments. However, as bingo has moved online, it has been commodified, shaped, and driven by large commercial operators and transnational service providers.⁴⁶

II. GOVERNING ONLINE BINGO THROUGH RISK

While the first online bingo site emerged in 1998,⁴⁷ UK-facing sites such as www.uk-bingo.net began to appear in the early 2000s. An interviewee, who developed some of the first EU facing bingo sites, described the regulatory landscape at the time as the “wild west” (Interview EU-03). Since then, online gambling regulation has developed and facilitated the expansion of gambling markets. By 2017, the Global Gambling Revenue in the twenty-eight EU Member States for online gambling was estimated at €20.215 billion.⁴⁸ Of this, just over €920 million

⁴³ Dean, *supra* note 20 at 195; see also Fiona Nicoll, “Beyond the Figure of the Problem Gambler: Locating Race and Sovereignty Struggles in Everyday Cultural Spaces of Gambling” (2018) 30 *Journal of Law & Social Policy* 127.

⁴⁴ Reith, *supra* note 2; Alan F. Collins, “The Pathological Gambler and the Government of Gambling” in James F. Cosgrave, ed, *The Sociology of Risk and Gambling Reader* (New York: Routledge, 2006) 355.

⁴⁵ Reith, *supra* note 2 at 727; Henry R. Lesieur & Sheila B. Blume. “The South Oaks Gambling Screen (SOGS): A New Instrument for the Identification of Pathological Gamblers” (1987) 144:9 *The American Journal of Psychiatry* 1184.

⁴⁶ Casey, *supra* note 6.

⁴⁷ Robert J Williams, Robert T Wood & Jonathan Parke, “History, Current Worldwide Situation, and Concerns with Internet Gambling” in Robert J Williams, Robert T Wood & Jonathan Parke, eds, *Routledge International Handbook on Internet Gambling* (New York: Routledge, 2012) 3 at 4.

⁴⁸ See H2 Gambling Capital Report in *Folkrörelsernas Samarbetsorgan för Spel och Lotterifrågor* (Folkspel), ‘Folkspel Svar på Remis En Om Reqlerad Spelmarknad’ (2017), online: <regeringen.se/4a3c81/contentassets/5f3fffd55ef64fdaaff7f2e2bf6ea1db/101-folkrörelsernas-samarbetsorgan-for-spel-och-lotterifragor.pdf> [perma.cc/2EUL-KU25] at 7.

was attributed to online bingo. Unlike lotteries and sports betting, which are ubiquitous across the EU, online bingo is not popular in all EU Member States. A representative from an online gambling trade association explained:

If it's a country where they have never really done bingo, it [online bingo] is a hard sell. It's such a crowded marketplace with the games people are familiar with. ... For some it is, for some it's a huge commercial sector of course. ... Generalising it, when we reach further east in Europe, it drops off the map (Interview EU-06).

Countries with a culture and tradition of land-based bingo tend to be the key markets for online bingo. In the context of my research, the United Kingdom (UK), Spain, Italy, Ireland, Denmark, Portugal, and Sweden emerged as the key online bingo markets in the EU.

Online bingo regulation in the EU is a patchwork of national regimes and approaches. This has resulted from the absence of sector-wide EU harmonization and the wide margin of discretion afforded to Member States in how to regulate online gambling. Despite the disparity of regulatory approaches, I examine below how the UK, Italy, Spain, and Portugal have sought to govern online bingo through a framework of risk. While online bingo regulation in these countries has focused on risk minimization, I argue these states have also embraced the economically productive nature of risk by opening markets and encouraging enterprise, competition, and innovation in their online bingo markets.

A. OPENING MARKETS, MANAGING RISK, AND ENTERPRISING GOVERNANCE

Offshore commercial operators and state monopolies have offered online bingo in the EU since the early 2000s. However, the UK was the first EU Member State to liberalize its online bingo market with the Gambling Act 2005. The Gambling Act 2005, drawing upon the recommendations of the 2001 Budd Report, framed gambling as a leisure activity.⁴⁹ Following the liberalization of the UK market, key online bingo markets have been liberalized. While Italy legalized land-based bingo in 2000 and moved to liberalize its online gambling market in 2006, it was not until December 2009 that online bingo was legalized and the market

⁴⁹ The Budd Report was published by the "Gambling Review Body" and provided recommendations on how gambling should be regulated in Great Britain. See UK, Department for Culture, Media and Sport, Gambling Review Body, Gambling Review Report by Sir Alan Budd et al (2001), online: <nationalcasinoforum.co.uk/wp-content/uploads/2013/11/Gambling-Review-Budd-Report.pdf> [perma.cc/4URB-XQKA] [Budd Report]; UK, HC, "A Safe Bet for Success - modernising Britain's gambling laws: The Government's Response to the Gambling Review Report", Cm 5397 in Sessional Papers (2002), online: <hblb.org.uk/documents/Special_Betting_Exchange_Consultation/BEC%2092.%20White%20Paper%20A%20Safe%20Bet%20for%20Success.pdf> [perma.cc/3CQD-9TSJ] ["A Safe Bet for Success"].

liberalized.⁵⁰ Spain liberalized its online bingo market several years later, in 2011, with Portugal liberalizing its online bingo market in 2016.⁵¹

The liberalization and legalization of online bingo in the UK, Italy, Spain, and Portugal reflect a risk model of gambling regulation in which markets are controlled to deal with the risk of crime and addiction.⁵² The responsabilization of individuals is a key means through which these countries seek to govern the risk of gambling harms, with the provision of information and self-exclusion being central risk management technologies. These technologies of agency, “engage us as active and free citizens, as informed and responsible consumers.”⁵³ Despite the presence of negative risks, gambling markets are also economically productive for states. The legalization and liberalization of online bingo is also a means through which states embrace risk.

The move towards enterprising governance is motivated by technological changes that have rendered national borders porous and challenged traditional approaches to gambling regulation. As O’Malley observes more generally:

Underlying much of this push towards enterprising governance has been a series of interlocking discourses about globalisation as an unavoidable, already present future that renders existing institutions and arrangements obsolete. It is argued that the autonomy and boundaries of national economies have been fractured, the result being that all economic relations have become subject to an international competition that does not permit tradition, protectionism or other special pleadings.⁵⁴

⁵⁰ Law No 88, 7 July, 2009, Regulation Laying Down Requirements for Operation and Collection of Revenue in Remote Gambling and Procedures Therefor (Italy), online: <ec.europa.eu/growth/tools-databases/tris/en/search/?trisaaction=search.detail&year=2007&num=709>[perma.cc/HDL4-HXGY]; Notification 2010/627/I, 24 May, 2011 Directorial *Decree On*: “Provisions Concerning Gaming Regulations, as per Ministerial Decree No. 29 of 31 January 2000, For Bingo Played Remotely (Italy), online: <ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaaction=search.detail&year=2010&num=627&fLang=IT&dNum=1>[perma.cc/6T7Z-D2Q2].

⁵¹ Ministry for Finance and Public Administration, “Order EHA/3087/2011, of 8 November which Approves the Basic Regulations for the Game of Bingo” (2011), online: <ordenacionjuego.es/cm/s/brower?id=workspace://SpacesStore/12dabc00-594e-4600-86b5-1332f0946140> [perma.cc/NYY4-XAP3]; Regulation 425-A/2015, 20 July, 2015, Regulation Approving the Rules for Playing Bingo Online (Portugal), online: <ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaaction=search.detail&year=2015&num=460&fLang=PT&dNum=1>[perma.cc/HF4T-ZN8Q]; Decree-Law No 66/2015, 29 April, 2015, The Legal Regime for Online Betting and Gambling (Portugal), online: <ec.europa.eu/growth/tools-databases/tris/en/search/?trisaaction=search.detail&year=2014&num=431> [perma.cc/B274-Y6WJ]; Law 13/2011 of 27 May (Spain), “On the Regulation of Gambling” (2011), online: <ordenacionjuego.es/cm/s/brower?id=workspace://SpacesStore/292cbe26-081b-44c2-8632-f5e42850ae58> [perma.cc/3B4P-ZNTD]; Alejandra Boto, “A New Legislative Framework for Online Gaming in Spain” (2013) 4:1 UNLV Gaming Law Journal 11.

⁵² Kingma, *supra* note 2 at 49.

⁵³ Dean, *supra* note 20 at 196; Sytze F. Kingma, “The Liberalization and (Re)Regulation of Dutch Gambling Markets: National Consequences of the Changing European Context” (2008) 2:4 Regulation & Governance 445 at 449.

⁵⁴ O’Malley, *supra* note 2 at 61.

In the UK, the Budd Report articulated the inability of the state to effectively prevent access to online gambling.⁵⁵ The liberalization of online gambling in Spain further points to technology challenging national borders and an interviewee explained, “the key aim of the legalisation of online gambling to channel ... consumption towards the regulated environment.”⁵⁶ The liberalization and commercialization of online gambling in Portugal drew upon the initial legalization of games of chance in 1927 that noted, “gambling was a fact against which regressive provisions could do nothing.” The Portuguese government noted, “[o]nline gambling is widespread all over the world and the Portuguese state cannot ignore this reality.”⁵⁷ While technology challenges traditional approaches to gambling regulation, it also opens the opportunity to embrace the economically productive nature of risk taking.

The liberalization of the UK’s online gambling market is the clearest example of enterprising governance.⁵⁸ The liberalization of online gambling in the UK aimed “to allow industry expansion, and to encourage a competitive, commercial market with increased choice for consumers in the broader interests of the British economy.”⁵⁹ An interviewee closely involved in the liberalization debates prior to the 2005 Gambling Act outlined the element of risk and uncertainty in the decision. They explained that it was difficult “to appreciate the scale and development of the online industry. ... So we didn’t see it coming. Any regulator who said they did well, I’m sorry, I think they are trying to kid themselves” (Interview EU-23). More generally, there is a key economic objective that underpins the channelling argument put forward by many states in their move towards opening gambling markets—channelling customers to licensed operators stops revenue from leaving states and provides not only licence fees, but substantial tax revenues for states. As a representative from an online gambling trade association explained, “I mean for us, we see the major driver as being economic, for a change. Countries tend to do it [opening gambling markets] when they need tax revenues” (Interview EU-06).

The entrepreneurial spirit of enterprising governance has meant that moments of economic crisis are viewed as opportunities to overturn longstanding approaches to gambling regulation. In Italy, for example, the need to finance the reconstruction efforts following the L’Aquila earthquake that occurred in the Abruzzo region in April 2009, along with the country’s mounting deficit, spurred the eventual liberalization of the Italian online gambling market towards the end of 2009.⁶⁰ A further and starker example of this type of enterprising governance is found in Portugal, where a strict approach has traditionally prevailed. Gambling was prohibited in principle and the charity Santa Casa da Misericórdia de Lisboa was entrusted with monopoly rights to offer certain gambling services such as lotteries and sports betting. In 2007, Portugal defended its right to reserve the provisions of gambling services to Santa Casa against challenges by commercial gambling operators, and strongly argued against the

⁵⁵ Budd Report, *supra* note 49; “A Safe Bet for Success”, *supra* note 49.

⁵⁶ Law 13/2011, *supra* note 51.

⁵⁷ Decree-Law No 66/2015, *supra* note 51.

⁵⁸ See Gerda Reith, “The Culture of Gambling in Great Britain: Legislative and Social Change” in Toine Spanens, Alan Littler & Cyrille Fijnaut, eds, *Crime, Addiction and the Regulation of Gambling* (Boston: Martinus Nijhoff Publishers, 2008); Cosgrave & Klassen, *supra* note 39 at 5.

⁵⁹ Reith, *supra* note 58 at 174.

⁶⁰ Janne Nikkinen, “The Global Regulation of Gambling: A General Overview”, online: (2014) 3 University of Helsinki: Working Papers of Images and Theories of Addiction <helda.helsinki.fi/bitstream/handle/10138/44792/Nikkinen_Global_Regulation_of_Gambling.pdf?sequence=6> [perma.cc/P8TZ-9T2D]; Mauro Croce et al, “Italy” in Gerhard Meyer, Tobias Hayer & Mark Griffiths, eds, *Problem Gambling in Europe Challenges, Prevention, and Interventions* (New York: Springer, 2009).

commercialization of its online gambling market.⁶¹ Despite this early resistance, Portugal announced that it would liberalize its online gambling market on 3 October 2013, following meetings with the European Commission, the European Central Bank, and the International Monetary Fund at the end of September 2013. As part of an IMF-EU bailout, Portugal's commitment to liberalize its online gambling market was included in the eighth update of its Memorandum of Understanding of Specific Economic Policy Conditionality.⁶² However, opening online gambling markets is only the initiation of states' embrace of risk.

B. ROLLING BACK REGULATION AND EMBRACING RISK

When states open gambling markets with the objective of channelling players towards regulated operators, they embrace risk through the liberalization of online gambling. However, states must also embrace and respond to "market risk."⁶³ A number of regulators described the pressure to roll back regulation to ensure that online bingo markets and offers are attractive to commercial operators and customers.

There is the risk of establishing rules that are not applicable or that are or that wouldn't be accepted, by the industry. If the industry doesn't accept the rules they don't get licensed. You don't succeed in moving the gambling from illegal sector to the legal one. (Interview EU-29)

And, the other part of the tension, let's say contradictory part of the tension was facing the reality that in the online sector you cannot quite work under the same context or paradigm when it comes to regulating that it that might be applicable under land based, because if you are too, let's say, strict or prescriptive, at the end of the day, the access to the unregulated offer is very difficult to keep citizens from. (Interview EU-36)

For online bingo, regulations prescribing game mechanics and those relating to ancillary products such as casino games and slots emerged as key areas where states rolled back regulation to make markets and offers more attractive for commercial operators and customers.

Many of the online bingo operators and software suppliers that were interviewed for this research stressed the importance of being able to innovate, design, and offer new bingo variants. However, a number of Member States including Spain and Italy drew upon the prescriptive regulatory framework for land-based bingo when initially regulating online bingo. In Italy, only 90 ball bingo was allowed, and prizes could only be awarded for the first line and full card.⁶⁴ Spain only allowed for 90, 80, and 75 ball bingo and required online bingo to be strictly *pari-mutuel* (where prizes come directly from the common pool of money wagered in a particular bingo game).⁶⁵ Operators explained:

⁶¹ *Liga Portuguesa v Departamento*, C-42/07 [2009] ECR I-07633.

⁶² European Commission, "The Economic Adjustment Programme for Portugal Eighth and Ninth Review" (2013) 164 *Occasional Paper* at 69, online: <ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp164_en.pdf> [perma.cc/NEQ8-UWFL].

⁶³ Cosgrave & Klassen, *supra* note 39 at 12.

⁶⁴ Notification 2010/627/I, *supra* note 50.

⁶⁵ Ministry for Finance and Public Administration, *supra* note 51.

Spain again was a bit of a nightmare, very prescriptive, there are only two forms of the bingo gaming that you can currently play out there, very much limited in terms of what you can offer in terms of the jackpots and ticket pricing. (Interview EU-04)

Italy ... It's literally completely black and white what you have to do. And there is no deviation from that. A couple of companies have tried to innovate around it by changing the front end slightly in terms of the display of a bingo ticket, but it's not something that's going to derive a massive upside ... (Interview EU-04)

[In Italy] ... we found that the bingo offering that you could provide into the Italian market was very regimented. ... And so, you couldn't provide a variety of bingo products that we'd like to have offered. ... So they have very much sort of restricted sort of creativity which is allowed in the UK and Spain and Ireland, to give the player a bit of experience. (Interview EU-20)

One regulator mentioned how in hindsight it was clear that the initial way in which online bingo was regulated in Spain was overly prescriptive and had restricted the ability of operators to innovate and develop a broad portfolio of products (Interview EU-36). He went on to note that this made sense at the time when one could not foresee how the market would turn out or behave. Another regulator noted: "there [in Italy] is a huge pressure from the industry to change the rules. And I agree with them, because the objective when we started to regulate online and, during all this year, we've been trying to regulate it in a way that it could be competitive with the offshore offerings" (Interview EU-29). He went on to note that in Italy, there was a need to establish "flexible" rules in order to present games offered in the regulated market as "absolutely comparable to the dot.com ... illegal market" and to halt the decline in online bingo (Interview EU-29). In response to such pressures, both Italy and Spain rolled back their regulation of game mechanics to allow operators to innovate and create new bingo variants beyond those that were allowed in the land-based environment.⁶⁶

Online bingo is peculiar in that it is not a big revenue generator for operators. Many interviewees explained that slots, casino games, and other side games are significant revenue streams for online bingo operators. A number of operators have described how bingo is run as a "loss leader" and that around fifty per cent of revenues are generated through slots, casino, and side games (Interviews: EU-03; EU-04).⁶⁷ Regulators also drew attention to the reliance that online bingo operators placed upon these ancillary products. A regulator spoke about his realization:

⁶⁶ While Spain implemented their regulations, Italy's implementation has been delayed. See: Notification 2012/474/I, August 9, 2012, Managerial Decree on "Regulations Governing the Game of Bingo with Remote Participation" (Italy), [online: <ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2012&num=474&dLang=EN>](http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2012&num=474&dLang=EN) [perma.cc/356P-L74P]; Ministry for Finance and Public Administration, "Order HAP/1998/2013 of 22 October, Which Amends Various Ministerial Orders Relating to Different Types of Games" (2013), [online: <ordenacionjuego.es/cm/s/brower?id=workspace://SpacesStore/144d2802-67c2-4dfe-993c-8e8ed35bc84e>](http://ordenacionjuego.es/cm/s/brower?id=workspace://SpacesStore/144d2802-67c2-4dfe-993c-8e8ed35bc84e) [perma.cc/DF9S-ZJ6R].

⁶⁷ See also a recent report by H2 Gambling Capital that estimated that online bingo operators generate 65% of their revenue from casino and slot games. See H2 Gambling, *supra* note 48 at 3; (Interviews: EU-03; EU-04)

[T]he online bingo model is remarkably similar to the offline bingo model in that the bingo game can be a loss leader or making a modest profit, but because the gaps in the game and the distractions of slots and other games and the cross selling of other products, it's essentially used as a marketing vehicle. It brings people in. It provides them entertainment. It even has the social element of chat rooms. But actually, generally speaking, the operators want their bingo players to also play on slots where there's a more significant return to the operator than through the bingo game. (Interview EU-23)

Understanding bingo as a loss-leader highlights the importance of a regulatory model that permits online bingo operators to offer slots and other side games. A software supplier explained that the Spanish online bingo market had not taken off because it was only recently that operators could legally offer online slots (Interview EU-03). An interviewee explained that this prohibition in the 2011 Spanish regime was based upon a “prescriptive and precautionary spirit” (Interview EU-36). However, in 2014, Spain introduced regulations for the provision of online slot machines.⁶⁸ An interviewee stated that the reason for this change was a realization that online slots were a “sufficiently important” product and that online gambling operators needed “a robust and synergic portfolio of products” (Interview EU-36).

The use of bingo, as a stalking horse by online operators to draw customers towards more lucrative forms of gambling, prompts us to rethink how states govern risk. Here, the legalization and liberalization of gambling markets includes creating regulatory models that facilitate the cross selling of gambling products. These regulatory models allow online bingo sites to become spaces in which other “harder” forms of gambling, given their faster rates of play, are offered alongside bingo.⁶⁹ The desire to make online bingo markets attractive and economically productive for commercial operators drives states to embrace risk through regulation that allows for the creation of gambling environments, in which perceived “softer” forms of gambling are deployed to draw consumers towards more harmful and lucrative gambling products. This observation pushes us to rethink the role that bingo plays for online operators and how this is enabled by regulation. It also requires us to be cognizant of how regulation can facilitate the creation of particular online gambling spaces and environments.

In many countries, gambling markets are regulated to minimize the risk of crime, gambling harms, and the loss of tax revenue. These risks arise not only from the nature of gambling products and markets, but also from the presence of unauthorized operators and the inability of states to channel consumers to regulated markets. Risk in the context of gambling markets can also relate to market risks. I have argued above that many EU Member States' online bingo regulation has been orientated towards minimizing these risks. At the same time, governments have embraced risk through opening and encouraging enterprise, competition, and innovation in markets. In the following section, I burrow down into the liberalization debates in Denmark, Sweden, the Netherlands, and Ireland to reveal how the formulation of

⁶⁸ Ministry of Finance and Public Administrations, “Order HAP/1370/2014, 25 July, Approving the Basic Regulations for Betting on Online Slot Machine Games” (2014), online: <ordenacionjuego.es/cmisis/browser?id=workspace://SpacesStore/0c622978-56a7-4464-8e3f-4a2ea48ebbb6> [perma.cc/YB4S-H2TH].

⁶⁹ See Jim Orford et al, *Gambling and Problem Gambling in Britain* (New York: Brunner-Routledge, 2003) at 82 for a discussion of the relationship between rate of play and problem gambling.

online bingo as a commercial commodity has jarred with its earlier formulation as a means of charitable fundraising and revenue generation for good causes.

III. FROM WELFARE TO RISK: THE COMMERCIALIZATION OF ONLINE BINGO

Online bingo's classification as a lottery and the game's regulation have been shaped by the characteristics of land-based bingo—a low-risk “fun” game, closely associated with charity and community. However, as it has moved to the online environment, the game has become commodified and shaped by large transnational commercial providers. Commercial logics and technological innovation have transformed the game into a commodity. Commercial operators now offer a huge array of bingo game variants with faster rates of play than traditional land-based bingo, with games sometimes lasting shorter than one minute.⁷⁰ Within the gambling space provided by online bingo sites, players are able to play online slot machines, casino games, and other side games.⁷¹

However, given bingo's importance to state lotteries and non-profit organizations, it has become a focal point of contestation in the liberalization and commercialization of online gambling. According to one interviewee, “[w]hen the negotiations take place if there's any sort of give, often it's the bingo that is not allowed to be licensable to private companies first. But that's where the lotteries would see themselves moving to next if they moved anywhere” (Interview EU-20). Within these boundary disputes, commercial and non-profit gambling enterprises mobilize around questions of ownership over bingo as it moves online.

A. COMMERCIALIZATION, RISK, AND THE EROSION OF BINGO EXCEPTIONALISM

The classification of bingo as a form of lottery game is a central device used to assign ownership over the game. When discussing problems faced by commercial operators, a representative from an online gambling trade association explained that:

There is a huge [problem] for bingo operators, which is in, I wouldn't say most, but certainly in many, many member states they class it as a lottery. And so even if they licence the online gambling market they will not offer licences for this. If you look at Denmark, which is often held up as the best two or three licensing, licensing and tax regimes and they licence everything, pretty much. Bingo no, because it's a lottery and that's reserved for the state lottery. So you've got that whole issue of definition. (Interview EU-06)

Denmark, Sweden and Ireland have deployed different regulatory frameworks to carve online bingo out from the competitive market and reserve it for non-profit organizations and/or the state—a form of bingo exceptionalism. Ireland has not explicitly regulated online bingo and the game in its online form still falls under the Gaming and Lotteries Act 1956, which prohibits private profit being derived from lotteries, and provides that licences can only be granted where

⁷⁰ Casey, *supra* note 6.

⁷¹ *Ibid.*

lotteries are run for charitable and philanthropic purposes.⁷² In the 1965 case of *Bolger v Doherty*, the Irish Supreme Court held that bingo fell within the definition of lottery for the purposes of the Gaming and Lotteries Act 1956.⁷³ Consequently, online bingo in Ireland can only be provided by organizations run for charitable and philanthropic purposes. While Denmark introduced a licencing regime for most online gambling products in January 2012, Section 6 of the Act on Gambling reserved the right to provide lotteries, including online lotteries, for the state monopoly, *Danske Spil*.⁷⁴ Although not defined in the Danish Act on Gambling, an explanatory note explained that online bingo is included in the definition of lotteries reserved to the state monopoly, *Danske Spil*.⁷⁵ By contrast, the Swedish Lotteries Act 1994 (SFS 1994:1000) provides that permits to arrange “true lotteries” can only be granted to Swedish non-profit associations and to the state monopoly, *Svenska Spel*.⁷⁶ The Swedish Lotteries Act 1994 was amended in 2002 to allow for the possibility of Swedish non-profit associations and *Svenska Spel* to offer lottery games online.⁷⁷ In Sweden, online bingo is treated as a numbers game like lotto, and falls within the definition of a “true lottery” in the Swedish Lotteries Act 1994. As such, non-profit associations and *Svenska Spel* may be permitted to offer online bingo.⁷⁸ The close relationship between lotteries and bingo has been important for questions of ownership over the game. Further, definitions and categories play a significant role in creating boundaries between commercial and non-profit gambling markets, and also in assigning ownership over particular forms of gambling.

Despite this bingo exceptionalism, there has been a move towards the liberalization and commercialization of online bingo in Denmark, Sweden, and Ireland. In 2013, the Irish government approved the Gambling Control Bill 2013: General Scheme.⁷⁹ The Bill proposes to allow commercial operators to be licensed to offer online bingo for the first time in Ireland.⁸⁰ In March 2017, the governmental inquiry on Swedish gambling regulation recommended the liberalization and commercialization of many forms of online gambling through the introduction of a licencing regime, including online bingo.⁸¹ In December 2017, the Swedish government published the Draft Gambling Act, which provides for the liberalization and commercialization of the Swedish online bingo market and is due to come into force in January 2019.⁸² In March 2017, Denmark notified the European Commission that it would remove

⁷² Gaming and Lotteries Act, 1956, s 28(2)(a) & (b).

⁷³ *Bolger v Doherty* [1970] IR 233.

⁷⁴ Section 7 and 10 of the Danish Act on Gambling also allows certain organisations to run class lotteries and non-profit lotteries.

⁷⁵ Danish Ministry of Taxation, “Proposal for a Gaming Act” (2010) at 90, online: <spillemyndigheden.dk/sites/default/files/Draft%20for%20the%20Act%20of%20gambling.pdf> [perma.cc/F6HJ-78D8].

⁷⁶ Lotteries Act, SFS 1994:1000, s 15 & s 45.

⁷⁷ Lotteries Act, SFS 202: 592.

⁷⁸ Lotteriinspektionen, “Bingo”, online: <lotteriinspektionen.se/en/permits-and-game-types/bingo/> [perma.cc/KU89-3NY9].

⁷⁹ Department of Justice and Equality, “Gambling Control Bill 2013: General Scheme” (2013), online: <justice.ie/en/JELR/Gambling%20Control%20Bill%20General%20Scheme%20July%202013.pdf> [perma.cc/4K2J-M28D].

⁸⁰ *Ibid* at Head 20(2)(v).

⁸¹ See Håkan Hallstedt, *En Omreglerad Spelmarknad* (SOU 2017:30) (Stockholm: Statens Offentliga Utredningar, 2017) at 50 & 85, online: <regeringen.se/4969b7/contentassets/29291777554d47e49e717171e4eb5f83/en-omreglerad-spelmarknad-del-1-av-2-kapitel-1-21-sou-201730> [perma.cc/RU28-FR8S].

⁸² Notification 2017/0590/S, December 19, 2017, Draft Gambling Act (2018:000) (Sweden), online: <ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2017&num=590&dLang=EN> [perma.cc/8CHT-BJ7M].

online bingo from state monopoly and allow licensed commercial operators to offer the game on the Danish market from January 2018.⁸³ In contrast, the Netherlands' initial draft of the Remote Gambling Bill, which purportedly sought to liberalize online gambling and introduce a licence regime for certain forms of online gambling, segmented lottery products from the competitive market and initially considered bingo type games as lottery products.⁸⁴ However, the move towards liberalization and commercialization is seen in subsequent drafts of the Remote Gambling Bill, which have proposed that while "long odds" bingo will be defined as a lottery product and reserved for the non-profit sector, commercial operators will be able to offer the faster "short odds" form of the game on the regulated market.⁸⁵ With this, we see the erosion of the earlier bingo exceptionalism discussed above.

Concerns with risks posed by unlicensed and unregulated online operators drive the liberalization and commercialization of online bingo. The Danish government outlined in its notification to the European Commission that the black market for online bingo in Denmark was twice the size of the regulated market.⁸⁶ The notification went on to explain that "[t]he proposed liberalisation of online bingo thus aims to channel players away from the unregulated market into a Danish regulated market with protection of the players and measures to prevent gambling addiction."⁸⁷ This channelling argument—by which states govern the risks associated with gambling through the creation of a market that channels players away from unregulated operators and to regulated operators—lies at the heart of the Swedish proposal to liberalize and commercialize online bingo, with the report directly quoting the Danish findings regarding the size of the black market for online bingo in Denmark.⁸⁸ One of the key issues identified by the Swedish proposal is that the existence of offshore operators "impedes the opportunities for dealing with problem gambling and gambling addiction."⁸⁹ In the initial Irish report on the regulation of online gambling, it was noted that any attempt to reserve online bingo for the non-profit sector would "in all likelihood, only serve to drive customers to unlicensed operators," and thus limit one of the core objectives of the Gambling Control Bill: to protect "vulnerable persons, including children, from risks to their well being arising from gambling."⁹⁰ With the ability of technology to render national borders porous and allow

⁸³ Notification 2017/87/DK, March 1, 2017, Draft Act Amending the Gambling Act, the Gambling Taxes Act and the Act on Danske Spil A/S: Liberalisation of Online Bingo, Bets on Horse Races, Dog Races and Pigeon Races, and the Introduction of a Special Contribution to the Sport of Horse Racing (Denmark), online: <ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2017&num=87&dLang=EN> [perma.cc/2ZGN-K48C].

⁸⁴ Notification 2014/101/NL, 5 March, 2014, Amendment of the Gambling Act, the Gambling Tax Act and Certain Other Acts Relating to the Organisation of Remote Gambling (Netherlands) at 85 and 99, online: <ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2014&num=101&dLang=EN> [perma.cc/8FV2-HPGF]; for further discussion of gambling liberalization debates in the Netherlands see Littler & Järvinen-Tassopoulos, *supra* note 36.

⁸⁵ Jellien Roelofs and Alan Littler, "Remote Gaming Bill enters the Parliamentary Arena Despite Negative Council of State Advice" (2014) *European Gaming Lawyer* 12 at 13.

⁸⁶ Notification 2017/87/DK, *supra* note 83 at 5.

⁸⁷ *Ibid* at 5.

⁸⁸ Hallstedt, *supra* note 83 at 364.

⁸⁹ *Ibid* at 47.

⁹⁰ Department of Justice and Law Reform, "Options for Regulating Gambling" (2010) at 39, online: <justice.ie/en/JELR/Options%20for%20Regulating%20Gambling.pdf/Files/Options%20for%20Regulating%20Gambling.pdf> [perma.cc/WRU5-EGX5]; Joint Committee of Justice, Defence and Equality "Scheme of the Gambling Control Bill" (2013) Houses of Oireachtas at 141, online: <opac.oireachtas.ie/AWData/Library3/Appendices_A__B_Heads_of_Gambling_Control_Bill_140116.pdf> [perma.cc/PBA3-CPN7].

gambling operators to penetrate protected markets, states again are attempting to govern the risks associated with online gambling, such as the risk of crime and addiction, through a form of enterprising governance that would create competitive markets for online bingo.⁹¹

Risk, however, can be economically productive. Governing the risks associated with gambling through the creation of competitive markets brings with it the possibility of increased tax revenues, as states licence operators currently operate offshore. As the Swedish report mentions, “[t]he new regulation is intended to secure the financing of central government activities and public interests to as great an extent as possible.”⁹² The proposal notes that future reviews of gambling regulation should focus not only on issues of public health, but also tax revenues.⁹³ Interestingly, while online bingo is a small percentage of the Swedish online gambling market, the report explained that the liberalization and commercialization of online bingo is necessary to ensure that commercial gambling operators can maintain a broad product portfolio.⁹⁴ Thus, governing gambling risks through regulated competitive markets is not just an attempt to govern the negative risks associated with online bingo, but a way in which states embrace the economically productive nature of risk.

B. BOUNDARY DISPUTES

Questions of sector ownership reverberate through debates about the commercialization and liberalization of online bingo. These questions are driven by bingo’s liminal position between commercial and non-profit gambling. These questions are evident in the uncertainty as to whether online bingo will be liberalized and commercialized in the Netherlands. According to an interviewee:

[E]verybody knows in the Netherlands that lobbying from current incumbents and lobbying from the good causes has played a significant role, because they see a threat that online gambling is expected to be regulated ... For some games it’s clear that it will be regulated [licenced]: sport betting, poker, casino games. For some games it’s clear that it will still remain illegal online like the lottery. But for bingo it’s not clear. (Interview EU-38)

Further, recounting the decision to reserve online bingo to the Danish state monopoly in January 2012, an interviewee explained that the Danish government,

[D]ecided to go ahead and open a multi-licensing regime, but only for online betting, for online casinos and online poker, and there were discussions about online bingo. Obviously the industry wanted online bingo to be part of the online reform and to be privatised, but other stakeholders thought that bingo should be kept in the monopoly with the lottery games and that was the outcome. (Interview EU-26)

⁹¹ O’Malley, *supra* note 2 at 61.

⁹² Hallstedt, *supra* note 83 at 67.

⁹³ *Ibid* at 46.

⁹⁴ *Ibid* at 364.

In gambling liberalization debates in Sweden, the Swedish Bingo Association argued in 2017 that online bingo should not be commercialized because, both in principle and by tradition, bingo belonged to the “Peoples Movement.”⁹⁵ Another non-profit organization argued in these debates that online bingo, like land-based bingo, belonged to the category of “public gaming.”⁹⁶ A similar line of arguments is seen in discussions about the online gambling regulation and the proposed commercialization of bingo in Ireland. A member of the Irish Parliament noted that bingo is “a sector which was always reserved for the good cause part of our society.”⁹⁷ These arguments are particular to bingo given the game’s history and its relationship both to non-profit and commercial gambling. Boundary disputes, however, are fought on two sides.

Commercial operators drive the commercialization and liberalization of online bingo by exploiting the porous nature of national borders and by engaging in boundary disputes. A representative from an online gambling trade association noted that the boundary disputes relating to online bingo were the key spaces in which they encountered the game in policy discussions (Interview EU-06). The interviewee explained the trade association pushed against any attempt to “carve out” online bingo for the state or incumbent lottery operators (Interview EU-06). Questions of ownership were explicit in the debates in Sweden where the Swedish Trade Association for Online Gambling (BOS) argued that online bingo was being offered in free markets and belonged to the free market.⁹⁸ Similarly, the Kindred Group, which owns brands such as 32 Red and Unibet, contended that online bingo should not be “taken” from the competitive market.⁹⁹ These disputes about the rightful ownership of bingo, and indeed the different depictions of bingo, once again highlight “diverse nature of bingo as a political economic formulation.”¹⁰⁰

Non-profit organizations recognize that risk is a key framework for the governance of gambling and this has coloured their strategy of resistance to the commercialization of online bingo. I noted earlier that online bingo operators are reliant upon online slots, casino games, and other side games as a means of revenue generation, and that online bingo is used as a marketing vehicle for these ancillary products. As I argued above, the use of bingo as a stalking horse to draw consumers towards other forms of gambling raises questions about the perception of bingo as a gentler, less risky form of gambling. Many non-profit organizations put forward this argument and its underlying concern of risk in their responses to the proposed

⁹⁵ Svebico (Swedish Bingo Association), “Svebicos Remissvar på ‘En Omreglerad Spelmarknad’ SOU 2017:30 Dnr Fi2017/01644/OU” (2017) at 2, (original in Swedish) online: <regeringen.se/4a3c84/contentassets/5f3fffd55ef64fdaaff7f2e2bf6ea1db/166-sveriges-bingoarrangorers-centralorganisation.pdf> [perma.cc/U7UT-7HDX].

⁹⁶ Svenska Postkod Föreningen, “Svenska PostkodFöreningen och Organisationernas svar på Remiss En Omreglerad Spelmarknad (SOU 2017:30)” (2017), (original in Swedish) online: <regeringen.se/4a3c83/contentassets/5f3fffd55ef64fdaaff7f2e2bf6ea1db/159-svenska-postkodforeningen.pdf> [perma.cc/SD7F-2JKP]; see also Bygdegårdarnas Riksförbund, “Yttrande över Betänkandet ‘En Omreglerad Spelmarknad’ (SOU 2017:30)” (2017), online: <regeringen.se/4a3c81/contentassets/5f3fffd55ef64fdaaff7f2e2bf6ea1db/094-bygdegardarnas-riksforbund.pdf> [perma.cc/8RGS-3JK5].

⁹⁷ Joint Committee of Justice, *supra* note 90 at 57.

⁹⁸ Branschföreningen för Onlinespel (BOS - The Swedish Trade Association for Online Gambling), “Remissyttrande, SOU 2017:30 En Omreglerad Spelmarknad” (2017), online: <regeringen.se/4a3c80/contentassets/5f3fffd55ef64fdaaff7f2e2bf6ea1db/091-branschforeningen-for-onlinespel-bos.pdf> [perma.cc/5TFS-7TQH].

⁹⁹ Kindred Group, “Yttrande: En Omreglerad Spelmarknad, SOU 2017:30” (2017), online: <regeringen.se/4a3c81/contentassets/5f3fffd55ef64fdaaff7f2e2bf6ea1db/115-kindred-group.pdf> [perma.cc/AC5T-4C87].

¹⁰⁰ Kate Bedford, “Bingo Regulation and the Feminist Political Economy of Everyday Gambling: In Search of the Anti-Heroic” (2016) 13:6 *Globalizations* 801 at 802.

commercialization of online bingo in Sweden. Folkspel, a Swedish charity lottery whose members include seventy-three non-profit organizations, commissioned H2 Gambling Capital to undertake research on the online bingo market in the EU. Echoing my argument above, the report emphasized the importance of casino games and slots for online bingo operators, and Folkspel deployed it to argue that the liberalization and commercialization of online bingo would convert bingo from a low-risk form of gambling into a high-risk form of gambling given the mingling and cross selling of products on commercial online bingo sites.¹⁰¹ Folkspel argued that commercialization would thus result in a higher number of problem gamblers. Accordingly, reserving online bingo for the non-profit sector is no longer framed solely as a means of fundraising, but also a way in which online bingo can be governed through a framework of risk.

Concerns with risk do not dissolve the politics of distribution in debates around the liberalization and commercialization of online bingo. Questions remain about the proper allocation of gambling proceeds and the role gambling plays in the funding model of non-profit organizations and good causes. In Denmark, moving online bingo to the competitive market was tied to an agreement to compensate the good causes supported by Danske Spil's online bingo profit, estimated to be DKK 14 million.¹⁰² The Swedish governmental inquiry on gambling regulation made reference to the importance of non-profit associations, and protecting their "gambling domains" and sources of revenue.¹⁰³ In response to the proposal to commercialize online bingo in Sweden, a number of non-profit organizations argued that the report did not take into account the impact of such a change on their ability to fundraise, given that online bingo was their most important source of online gambling revenue.¹⁰⁴ Similar contestations are also present in debates in Ireland and the Netherlands, with charities seeking to ensure that the profit from online bingo are reserved for good causes.¹⁰⁵

While the classification of bingo as a lottery game was the central device used to assign ownership of online bingo to the non-profit operators in the early life of online gambling, the proposed liberalization and commercialization of online bingo in Ireland, Denmark, Sweden, and the Netherlands emphasizes the unstable nature of such classifications. The Irish Gambling Control Bill proposes to remove bingo from its current classification as a lottery game.¹⁰⁶ While previously classified as a lottery game in Denmark, online bingo is now classified as a casino game that can be offered on online casinos, beginning since January 2018.¹⁰⁷ A similar approach is being taken in the Netherlands, where "short odds" bingo will be classified as a casino game.¹⁰⁸ Further, the Swedish Draft Gambling Act 2018 excludes online bingo from the categories of online lotteries, which will be reserved to Svenska Spel and the non-profit associations.¹⁰⁹

The exclusion of online bingo from its earlier classification as a lottery game shows the significant role that these legal devices play in questions of ownership over gambling forms. However, the repositioning of online bingo also signifies the changing ways in which the game is imagined as it moves online. Online bingo is now principally perceived as a commercial

¹⁰¹ H2 Gambling, *supra* note 48 at 38.

¹⁰² Notification 2017/87/DK, *supra* note 85 at 13.

¹⁰³ Hallstedt, *supra* note 83 at 48 & 57-58.

¹⁰⁴ H2 Gambling, *supra* note 47; see for example Bygdegårdarnas Riksförbund, *supra* note 94.

¹⁰⁵ Department of Justice and Law Reform, *supra* note 92 at 272.

¹⁰⁶ *Ibid* at 39; Department of Justice and Equality, *supra* note 81 at Head 20.

¹⁰⁷ Notification 2017/87/DK, *supra* note 83 at 21.

¹⁰⁸ Roelofs and Littler, *supra* note 85 at 13

¹⁰⁹ Hallstedt, *supra* note 81 at 51.

gambling commodity and it has become more closely associated with forms of gambling such as casino games rather than lotteries.

IV. CONCLUSION

Law and society scholarship have analyzed the diverse and changing ways in which states govern through risk. In tandem, critical gambling scholars have shown how states are increasingly governing gambling through a framework of risk. Here, states seek to manage the negative risks relating to individual harm and crime, while embracing the economically productive nature of risk that arises from the liberalization of gambling markets. In this article, I have explored what we can learn about how states govern through risk by foregrounding online bingo in an analysis of gambling regulation.

I documented how states such as the UK, Italy, Spain, and Portugal have legalized and liberalized their online bingo markets. Drawing upon my empirical research, I argued that the move towards the legalization and liberalization of online bingo is a form of enterprising governance, driven by the economically productive nature of liberalized markets and the erosion of national borders by the technology. I have uncovered how concerns with “market risks” from unlicensed operators drove states to roll back regulations related to the mechanics of bingo and the use of ancillary gambling products such as slots and casino games. This enterprising governance seeks to make online bingo markets attractive and economically productive for commercial operators. Importantly, it is through this enterprising governance that states change the nature of bingo in its online form and produce spaces where bingo is mingled with other gambling products. Developing upon my previous work, where I argue that these developments pose challenges for charities and non-profit organizations,¹¹⁰ this paper illustrates how these changes are driven by enterprising governance and regulation that embraces the economically productive nature of risk.

Bingo has received relatively little academic attention compared to other forms of online gambling. It tends to be overshadowed by sports betting, casino games, and poker, or subsumed in discussions of lotteries. While unsurprising in some respects, it is also curious given that online bingo has been a significant focal point of contestation in the process of online gambling liberalization in countries such as Denmark, Sweden, Ireland, and the Netherlands. I have highlighted in this paper how these contestations have taken the form of boundary disputes, in which the framing of bingo as a commercial commodity clashes with a traditional understanding of the game as a means of fundraising for charities and good causes. The classification of bingo as a lottery game was a key regulatory device used to assign ownership over the game. It created a form bingo exceptionalism where the game was reserved for charities and good causes and prevented from being a source of private profit. However, the liberalization and commercialization of online bingo in these countries has resulted in online bingo’s transition from its earlier classification as a lottery game and the erosion of the bingo exceptionalism. The move towards the liberalization and commercialization of online bingo and the resulting boundary disputes spotlight not only the diverse meaning and content that different groups attach to bingo, but also the changing way in which bingo is imagined as it moves online.

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¹¹⁰ Casey, *supra* note 6.

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