Explaining Trends in Regulating Addictive Behavior – The Role of Policy Coherence

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Abstract:
This paper analyzes addictive behavior policy regimes – focusing on illegal drugs and gambling – in 19 countries over a period of 50 years. Specifically, it compares how these countries have restricted the consumption and possession of cannabis and the participation in sports betting while also considering how the countries have sanctioned violations of these rules. Turning to theories of policy convergence, we are able to explain why most of the countries have liberalized their sports betting monopolies but have maintained restrictive drug policy regimes. Standard explanatory factors cannot account for all of the empirical variation observed, however. We show how Portugal, a case which deviates in both sectors from the expected trend, can be explained by taking the concept of policy coherence into account.
Introduction

The research question pursued in this paper is twofold. First, we set out to describe empirical patterns in the regulation of addictive behavior policies, namely the regulation of gambling in the form of sports betting and illegal drug consumption and possession in the form of cannabis. Secondly, we seek to explain policy change within and across these sectors.

Both, illegal drug and gambling policy have received relatively little attention by scholars of public policy when compared to topics such as social policy or environmental policy.¹ There are essentially two contexts in which gambling has attracted analytical attention by political scientists: On the one hand, gambling is studied as a phenomenon of policy innovation. Particularly the spread of state lotteries and casinos in the United States (US) has been studied in this context. Here, gambling policy is used as a way to learn about the interaction between factors that drive policy diffusion and domestic factors that obstruct or facilitate such diffusion. These studies tend to focus on the step leading from the prohibition of lotteries, or casinos to a state controlled system of state lotteries (Berry and Berry 1990; Jackson et al. 1994; Jensen 2003; Lutter 2010) or privately licensed casinos (Calcagno et al. 2010). Such changes in gambling policy are predominantly perceived to be driven by economic considerations as they are a source of fiscal income over which different jurisdictions compete. A contrasting perspective is offered by scholars who focus on gambling as morality policy in which matters of first principles are seen to often outweigh purely economic considerations. While ideological opposition by religious groups can thus be a relevant obstacle to the spread of gambling liberalization (Clotfelter and Cook 1989; Pierce and Miller 1999), the framing of gambling policy reforms in moral terms seems to vary across countries and over time (Euchner et al. 2013; Ferraiolo 2013). These studies generally, however, remain fairly restricted in their empirical scope.

¹ For a notable exception for gambling see (Kingma 2008); for drugs see: (Kübler 2001).
Similarly, drug policy is either studied from a strictly sectoral perspective or through a lens of morality policy. Where a sectoral perspective is adopted, attempts to theorize causes of drug policy development or changes in drug policy regimes have been much less systematic. Explanations are rarely grounded in theory and remain often purely descriptive (Boekhout van Solinge 1997; Chatwin 2011; Houbourg 2010; Uchtenhagen 2010; van het Loo et al. 2002). Besides, drug control regimes and policy reform are frequently treated as an exogenous variable whose effects and effectiveness are then evaluated (Babor et al. 2009; Hughes and Stevens 2012; MacCoun and Reuter 2004; Serge 2003; Turnbull 2009). Comparative approaches generally remain restricted in scope providing detailed descriptions of drug policy regimes in only few countries (Boekhout van Solinge 2004; Goldberg 2005; Hyshka 2009; Tops 2001). Although drug policy is regarded as one of the “classic” fields of morality policy (Knill 2013; Mucciaroni 2011), there exist only a few studies analyzing drug control regimes from that analytic perspective. These contributions either focus on determinants of drug policy development in the US context (Meier 1992, 1994) or analyze the role of framing in the drug policy-making process (Euchner et al. 2013).

By comparing addictive behavior policy regimes across two sectors and 19 countries, this paper thus addresses the descriptive gap in existing scholarship. Furthermore, by adopting coherent theoretical framework for analyzing patterns of policy change – drawing on theories of policy convergence – we address the analytical gap in the literature on addictive behavior policies. This way, we find that when complementing dominant theories of policy convergence by the concept of ‘policy incoherence’ as an explanatory factor, empirical dynamics in addictive behavior policy can be better understood. Scientific evidence seems to play a key role in challenging the legitimacy of existing policy regimes by revealing their incoherence.

The paper proceeds as follows. In a first section we introduce the commonalities and particularities of gambling and drug regulation as two sub-sectors of states’ addictive
behavior policy regimes. Secondly, we present our theoretical framework for analyzing policy change in these areas. In a subsequent section, we present empirical patterns and discuss to what degree our theoretical expectations are reflected by the data. Next, we present evidence from addictive behavior regulation in Portugal which is identified as a deviant case in both sub-sectors. The paper concludes with a short discussion of the results.

Empirical Patterns in Addictive Behavior Policy

The regulation of drugs and gambling are the two key sectors of addictive behavior policy. In both sub-sectors, policy-makers have to find an optimal balance between conflicting objectives. On the one hand, they have to find an ideal trade-off between (a) an obligation to ensure citizen’s personal liberties and (b) an obligation to protect citizens from harm. On the other hand, policy-makers have to balance the objectives to (c) minimize potential social costs associated with the development of addictive behavior and to (d) exploit the economic potential of hazardous activities, such as taking drugs or gambling.

To find an optimal balance between these conflicting objectives, policy-makers essentially have two different sets of instruments at their disposition: rules and sanctions. By defining rules, policy-makers regulate to what degree the legal access to gambling and drugs is restricted or allowed. The definition of rules enables regulators to influence the availability of addictive substances or activities to the general public and provides them with the opportunity to exploit their economic potential. By establishing sanctions, policy-makers define how tolerant they are towards rule violations; i.e. towards the illegal possession of drugs and the illegal participation in gambling. Comparative criminology suggests that sanctions are not only used for their potential to deter people from violating rules and their ability to re-educate infringers but also as an instrument of symbolic politics (Nelken 2002).

Against this background, we use both elements – rules and sanctions – to describe the empirical changes in addictive policy regimes.
On the rules-dimension, we focus on the general regulatory paradigm adopted by policymakers. To capture this paradigm in the context of drugs, we focus on two central consumer-related activities: drug consumption and drug possession. Here, we distinguish between permission, partial prohibition, and prohibition. The assumption that guides the ordering of these approaches is that the prohibition of both drug consumption and possession is regarded as more restrictive than a ban on drug possession alone. Likewise, systems which completely ban drug possession (but not consumption) are more repressive than systems which only partially prohibit possession and consumption. In the permissive model, both consumption and possession of drugs are either completely or to a certain extent permitted. States which completely prohibit drug possession but do not (or only to a limited extend) ban drug consumption fall into the partially prohibitive model. The prohibitive model represents the most restrictive form of drug regulation. States completely prohibit both drug consumption and possession.

In the context of gambling regulation, we focus on sports betting other than horse-racing and also distinguish between three regulative paradigms: prohibition, state monopoly systems, and market systems. Under the prohibitionist model gambling activities are completely forbidden. In contrast, in state monopolist systems, policymakers decide to offer a legal supply of gambling activities and services. These are exclusively provided by a state monopolist, usually a state-owned company. Finally, market systems allow private or commercial actors to offer gambling services and activities to citizens. These suppliers usually have to apply and pay for a license given out by public authorities.

The sanctioning dimension measures the severity of punishment associated with a central consumer-related illegal activity in each sector. Regarding drugs, we measure the sanction for

2 With regard to the rules-dimension, we do not distinguish between “soft” and “hard” drugs since all illegal drugs have been regulated in the same legal way in the countries in our sample; regarding the sanctioning dimension, we focus only on cannabis since differences between the sanctions for cannabis offences and offences involving other drugs have existed in some countries in the sample.

3 Horse racing has enjoyed a special status in most countries in our sample being regulated in a more liberal way than betting on other sports. Consequently, we exclude horse-racing from the empirical scope of this paper.
a person who is in illegal possession of a small amount of cannabis for his/her personal and recreational (not-medical) use, who is a first-time offender and who is not addicted to drugs. Thus, the sanctioning dimension does not take into account illegal possession under aggravating circumstances, e.g. with the intention of dealing in drugs. In the context of gambling, we measure the sanctions for the participation in illegal sports betting. Depending on the regulatory paradigm, this reflects the participation in sports betting in general (prohibitionist model), in sports betting offered by other suppliers than the state monopolist (monopolist system), or in sports betting offered by unlicensed suppliers.

The sanctioning dimension for both policy fields consists of 16 categories of possible sanctions, which are ordered according to their severity. With regard to the ordering of the categories, we assume that a deprivation of liberty is always considered to be a more severe punishment than the imposition of a monetary fine, regardless of the length of the jail sentence or the amount of the fine. Likewise, a monetary fine is always more severe than a purely administrative sanction, like the withdrawal of the driver licence. Sometimes, there is the possibility of imposing a jail sentence and a fine or of jail sentences which can be substituted for fines. We consider the former to be more severe than the latter, regardless of the precise calibrations of the sentences. Sometimes, sanctioning provisions include “and/or”-provisions, leaving the decision of substitutability to the judge. It makes sense to assume that such types of penalties fall in between the mandatory and substitutable categories. Finally, there is a distinction made between high, medium, and low jail sentences in order to keep some of the information of the calibration of jail sentences but at the same time do justice to the need to reduce complexity. Thus, we conceive of a low mandatory jail sentence as a more severe punishment than a high jail sentence, which can be substituted for a monetary fine. The main challenge associated with this categorization rests with the definition of thresholds between low, medium and high jail sentences. To accommodate the empirical differences between both fields, we opt for sector-specific thresholds. Regarding illegal cannabis
possession, we label jail sentences up to six months low, sentences between six months and up to two years medium, and jail sentences above two years high. Regarding illegal gambling, we consider jail sentences of up to one year to be low, jail sentences of up to three years to be medium, and jail sentences of over three years to be high. The scale ends with a life sentence in jail as most extreme form of sanction.

Based on these measurement concepts, we illustrate the general patterns and developments in addictive behavior policy in the contexts of cannabis and sports betting (see figure 1). The vertical dimension reflects the regulatory dimension. Regulatory paradigms are colored accordingly. Prohibitionist models are colored in black. Partial prohibition of cannabis and state monopoly systems of sports betting are colored in grey. White color indicates market systems in sports betting and systems of permission in the context of cannabis possession and consumption. The horizontal axis represents the severity of sanctions for rule violations. More squares indicate higher levels of sanctions. Everything below three squares represents only administrative sanctions or fines. If three squares or more are displayed, we are in the context of criminal sanctions with potential prison sentences. We provide snapshots for three points in time, namely 1960, 1985, and 2010. The graph can easily be interpreted to get a first impression about developments within the sample. As more countries are displayed in lighter colors, addictive policy regimes become more liberal. Furthermore, when the total area covered by squares decreases countries have reduced the level of sanctions for rule violations. Figure 1 illustrates that by the 1960s, the vast majority of policy-makers in the Western world had answered the question of how to design optimal addictive behavior policy regimes in the context of gambling differently than in the context of drugs. The regulation of drugs reflected a preference of citizen protection at the cost of restricting individual liberties as well as the sacrifice of exploiting the economic potential of drugs as taxable product for the sake of what seemed to be an optimal way of minimizing the societal costs resulting from drug addiction.
Figure 1: Two-Dimensional Patterns of Addictive Behavior Policy Regimes
This found expression in predominantly restrictive policy regimes which imposed rather high criminal sanctions for violations of these rules. Specifically, in 1960 five countries of the sample – Greece (GR), Turkey (TR), the Netherlands (NL), Portugal (PT), and Spain (ES) – had prohibited both cannabis consumption and possession altogether. Nine states in our sample – Italy (IT), France (FR), Belgium (BE), Great Britain (GB), Israel (IS), Austria (AT), Ireland (IE), Switzerland (CH) and Denmark (DK) – had established partially prohibitive regulatory approaches, combined with varyingly severe sanctioning regimes. Italy stands out as the strictest punisher of that country cluster; illegal possession of drugs was sanctioned with up to 8 years imprisonment and a fine. The other countries of the group had chosen moderate penalties which provided the opportunity to substitute a jail sentence with a fine. With the exception of Spain, all of these states punished illegal possession with tough sanctions which included mandatory prison sentences. The remaining five countries of the sample – Germany (DE), Finland (FI), Norway (NO), Poland (PL), and Sweden (SE) – had not yet enacted regulations and sanctions on drug consumption and possession at that time; therefore, we coded them as most permissive.

In contrast, gambling regimes in 1960\(^4\) mainly reflected the wish to make use of the economic potential of gambling activity and an emphasis of personal liberties of responsible citizens. In consequence, the predominant gambling regime was characterized by a controlled supply of gambling products through state monopolies (grey color). While some countries – particularly Greece, and Turkey – imposed additional protections for this monopolist system by threatening people who participated in illegal gambling outside the monopoly with severe criminal sanctions, others abstained from such measures. There was thus no dominant penal paradigm. Only France and the Netherlands still ran prohibitionist systems banning sports betting with the exception of horse racing completely.

\(^4\) The information for Belgium refers to 1963 since we have been unable to gather information about Belgium for the period prior to this date.
Until 1985 the main changes resembled the legalization of sports betting in those two laggard countries; France (in 1985) and the Netherlands (in 1974). Furthermore, some countries reduced the strictness of sanctions imposed on people participating in illegal sports bets. Most notably, Poland substantially reduced sanctions for participants of illegal sports bets focusing its sanctions instead on suppliers of illegal gambling. In the context of drug policy, the two groups of countries with a partially prohibitive or prohibitive regulatory approach had both grown and the group of non-regulators had disappeared. Bans on the possession of drugs were introduced in Norway and Sweden in the 1960s, in Germany in 1971. Poland followed in 1985, but did not adopt sanctions for the offence of drug possession. Finland went one step further and prohibited not only the possession, but also the consumption of drugs in 1972. The only country belonging to the permissive regulatory model in 1985 is Spain which had witnessed a fundamental change of its drug law in the early 1980s. In 1983, possession of small amounts of drugs for personal use was removed from the list of criminal offences. While this kind of possession was thus not illegal and punishable any more, sanctions in the case of possession for other purposes than personal use remained high. Besides Spain, the Dutch adopted a new drug law in 1976 that did not criminalize drug consumption any longer and included only low and substitutable jail sentences for the offence of illegal cannabis possession. In contrast, France, Israel and Switzerland had strengthened their regulatory approaches in the early 1970s by prohibiting drug consumption. Within the partially prohibitive country cluster, Italy and Ireland significantly de-penalized illegal drug possession. In 1975, Italy completely removed sanctions for illegal possession of moderate amounts of drugs for personal use. Two years later, Ireland abolished the opportunity to impose jail sentences in the case of illegal cannabis possession and introduced a system of monetary penalties.

Until 2010, the group of countries following a prohibitive regulatory approach has further increased at the expense of the partially prohibitive cluster since Sweden and Norway banned
drug consumption in 1988 and 1992. Furthermore, we observe a general reduction of the sanctioning severity in comparison with 1960 and 1985. Spain has remained the only country with a permissive regulatory approach. Although Spain tightened its approach in 1992 by prohibiting drug possession for personal use again, this ban does only apply to possession in public; infringements are punished with administrative sanctions. Within the group of the prohibitive countries, France resisted the trend towards lower sanctioning levels and tightened the penalties for illegal drug possession in 1992. The most remarkable legal change occurred in Portugal, where tough jail sentences were replaced by administrative sanctions in 2000. Switzerland also decided to de-penalize drug possession for personal use; since 2002, only fines have been imposed in the case of such offenses. Belgium, part of the partially prohibitive cluster, adopted a similar sanctioning approach and introduced low monetary penalties for illegal cannabis possession in 2003. Italy, that had abolished punishment in 1975, re-penalized drug possession in 1990; however, only administrative sanctions were enacted.

In the context of sports betting, policy change between 1985 and 2010 is mainly observed on the vertical rules-dimension. Specifically, five additional countries – Denmark, Italy, Turkey, Poland, France – had given up their state monopolies by 2010 and adopted market systems allowing private actors to provide sports betting services if they fulfilled the criteria for holding an appropriate licence.

In sum, two developments regarding the regulation of illegal drugs and the sanctioning of cannabis offences are apparent: On the one hand, we observe persistence on the vertical axis reflecting the restrictiveness of rules on drug consumption and possession. On the other hand, a trend towards softer sanctions is visible. This latter trend is the result of changes within two country clusters. A first cluster maintains or introduces moderate reductions of prison sentences. A second cluster of countries – Belgium, Ireland, Italy, Portugal, Spain, and Switzerland – leaves prison sentences behind altogether and instead switches to purely...
administrative sanctions or fines. In the context of sports betting policy, figure 1 tells a different story. While there seems to have also been a slight reduction in sanctions for participating in illegal gambling, the main developments have occurred on the rules-dimension. Specifically, we observe a trend towards ever more liberal models of sports betting policy with more and more countries allowing for private licensees to supply citizens with sports betting opportunities.

While both sectors thus seem to have experienced delta-convergence towards more liberal policy regimes, they have taken different paths. In sports betting, this path reflects a liberalization of restrictive rules while penal paradigms appeared rather persistent. Regarding illegal drugs and cannabis in particular, it was the rule-dimension which remained persistent while liberalization has occurred through a lowering of sanctions, mainly pushed by efforts to de-penalize cannabis possession in Italy, Spain, Ireland, Switzerland, Belgium, and Portugal.

The next section reviews existing theoretical arguments for their ability to account for these developments.

Theorizing Different Paths of Addictive Behavior Policy Convergence

Since policy regimes in both sectors seem to converge – while on different paths – towards more liberal policy models, theories of policy convergence appear to be a natural starting point for attempts to explain empirical developments in both addictive behavior policies. Theoretical approaches accounting for policy convergence generally differentiate between two sets of explanatory factors. On the one hand, they identify causal mechanisms which trigger policy convergence across countries. On the other hand, they discuss domestic factors which facilitate or obstruct the effectiveness of these mechanisms (Knill 2005: 6). The literature generally distinguishes between five different mechanisms that can lead to convergence: imposition through political pressure, harmonization through legal obligation,
adaptation through competitive pressure, communication and learning, and individual problem solving resulting from similar problem pressure (Holzinger and Knill 2005).

**Theoretical expectations in sports betting**

Regarding mechanisms of policy convergence, existing scholarship on gambling policy, which mostly focuses on the US, particularly emphasizes the relevance of competition and learning. Specifically, policy-makers seem to adopt more liberal gambling regimes when they learn about the positive fiscal effects of such regimes from the experiences made elsewhere (Berry and Berry 1990) or come under competitive pressures from liberal gambling regimes in neighboring jurisdictions (Calcagno et al. 2010).

While US-centered studies ignored legal obligation as a relevant convergence mechanism, research on sports betting developments conducted by legal scholars in the context of European Union (EU) politics suggests that jurisprudence by the European Court of Justice (ECJ) has had a substantial impact on national policy developments in this sector. Specifically, the relevance of ECJ case-law results from potential tensions between the prohibition of sports betting, or its organization under state monopolies and the principle of freedom of services under EU law (Kaburakis 2009; Littler and Cyrille 2007; Siekmann 2012). This potential tension became particularly accentuated as modern communication technology (i.e. fax and internet) made it increasingly easy to organize betting services across national borders.

Regarding domestic factors facilitating or obstructing the spread of liberal gambling policies which are emphasized by existing scholarship are above all the presence of ideological opposition from religious groups (Clotfelter and Cook 1989; Lutter 2010; Pierce and Miller 1999). While the Catholic Church takes a rather lenient stand on gambling and does not declare gambling to a sin, more ascetic Protestantism remains critical of betting and gambling (Binde 2007: 153). Similar to Protestantism, Judaism and Islam take strict positions on
gambling (Bell 1974; Rosenthal 1975). These cultural characteristics should work as catalysts so that where external convergence pressures hit a specific country, cultural predispositions will affect how these pressures are processed (Jensen 2003).

In sum, two convergence mechanisms seem most relevant in the context of sports betting policy. First, with the development of online gambling, state monopolies were increasingly difficult to enforce. Second, the same technological development made it increasingly easy to provide cross-border gambling services which in turn accentuated the potential tension between national state monopolies on sports betting and the freedom of services under EU law. Particularly, in EU member states predominantly influenced by Catholicism, these pressures to liberalize should not have met a strong domestic ideological opposition.

**Expectation 1:**

*Against this background, we expect that EU member states should by 2010 under the pressure of online gambling and increasing legal scrutiny exercised by the ECJ have converged on a liberal market system of sports betting. Since these convergence pressures were limited to the rules-dimension there is no reason to expect that states change their prevalent sanctioning paradigms.*

**Theoretical expectations in drugs**

Generally, most countries in our sample have experienced similar waves of increasing degrees of problem pressure related to drug abuse over the time studied (Babor et al. 2009: 28ff; Chatwin 2011: 83ff; MacCoun and Reuter 2004: 213ff). The evidence regarding the effectiveness of different drug policy regimes in dealing with this problem pressure has remained mixed with respect to the success of restrictive or rather liberal drug control systems in limiting the spread of drug abuse and its negative consequences (Babor et al. 2009: 166ff; Boekhout van Solinge 2004: 26f; MacCoun and Reuter 2001; Reinarman et al. 2004; UNDOC
2007). Yet, when government officials answered the increasing problem pressure on the international level, arguments supporting the effectiveness of restrictive drug policy seem to have prevailed. Specifically, they adopted and continuously reinforced international commitments in the form of United Nations Drug Conventions binding them to maintain restrictive drug regimes prohibiting the possession of drugs and to impose criminal sanctions for drug law violations (Bewley-Taylor 2003; Boister 2001; Ghodse 2008; Vander Beken et al. 2002). Consequently and in contrast to the sports betting sector, international legal obligations do not work as potential drivers of liberalization. Instead, international legal obligations bind domestic drug policy regimes to maintain restrictive and punishing regimes. Similar to gambling domestic factors affecting national drug policy regimes, existing scholarship emphasizes the relevance of cultural and ideological opposition motivated by denominational convictions. One example is the relatively strict drug regime predominant in Sweden which has been promoted and protected by interests groups facilitating a culture of abstinence grounded in protestant ethics (Boekhout van Solinge 1997; Chatwin 2011: 89ff).

*Expectation 2:*

*Against this background, due to international commitments which bound states to prohibit drug possession and demanded that contracting states should impose adequate criminal sanctions for drug-related offences, no changes in the drug policy regimes are to be expected.*

With our empirical knowledge summarized in figure 1 above, we know that while these expectations seem to be in line with most of the empirical developments observed in both sectors, they do not capture the developments completely. The next section will provide a more thorough analysis of deviances from these theoretical expectations.
Identifying Deviant Cases?!

In order to analyze to what degree these theoretical expectations are reflected by our data, we categorized the countries in our sample according to their addictive behavior policy regimes in the context of sports betting and drugs in the year 2010. Specifically, we distinguish between persistent restriction and liberalization in both sectors. In the context of sports betting, persistent restriction relates to upholding state monopolies while liberalization refers to the introduction of market-based systems of sports betting on the rule-dimension. In contrast, persistent restriction in the context of drug policy relates to the upholding of criminal sanctions for the possession of cannabis for personal use while liberalization reflects the abolishment of custodial sanctions for such violations. We relate changes on the rules-dimension in gambling to changes on the sanctioning dimension in drug policy because these are the respective dimensions on which convergence towards more liberal policy models have occurred.

Furthermore, we investigate how their classification in both sectors co-varies with (a) their status as EU members and (b) the dominant religious affiliation within domestic societies. We do so because – as outlined above – we expect EU members to be under particularly strong pressure to liberalize their sports betting regimes. All countries in our sample, with the exception of Switzerland, Turkey, Israel, and Norway, are EU member states by 2010. While we do not expect religious-cultural factors to be active causal drivers of reforms in either sector (even Catholicism with its more lenient stand on drugs and gambling is unlikely to be an active promoter of liberalization in either context), such religious-cultural factors are shown to work as catalysts making convergence mechanisms more or less effective. Against this background, we categorized our sample in three groups representing a Catholic cluster, a non-Catholic cluster including Protestant, Jewish, and Muslim cultures promoting abstinence more rigorously in both sectors, as well as a mixed cluster where neither of the two Christian
denominations has been dominant. To do so, we rely on own data collection efforts. To finally, we do not have to provide additional clustering for countries in the sample bound by international commitments in the context of drug policy because all of the states in the sample have signed the UN Drug Conventions. These efforts are summarized in figure 2 below.

Figure 2: Analyzing Deviant Cases

Countries that match our theoretical expectations are EU member states located in the lower right quadrant of figure 2. Particularly, these states are predominantly of Catholic culture. EU member states located in the lower left quadrant of figure 2 correspond somewhat less to our theoretical expectations simply because we would have expected that strong pressures towards liberalizing sports betting would have pushed them into the lower right quadrant by 2010. Yet, one way to bring these countries, namely the Netherlands, Germany, Sweden, and

5 Specifically, the data was collected from various available surveys and resources in the context of the MORAPOL project directed by Christoph Knill.
Finland, in line with our theoretical expectations is by recognizing their cultural background characterized by stronger elements of Protestant ethics.

In contrast, countries located in the two upper quadrants are much harder to be made compatible with our theoretical expectations formulated above since we expected all countries to stick to their restrictive sanctioning approaches. Six countries have dropped custodial sanctions for cannabis possession, however. While countries in the upper right quadrant display theoretically unexpected behavior in only one sector (drugs), the three countries located in the upper left quadrant behave surprisingly in both sectors. They seem to be able to withstand great pressures for liberalizing their sports betting regimes while giving up their restrictive penal systems in the context of drug regulation at free will despite the international legal commitments to maintain tough sanctions. Specifically, Portugal and Spain stand out as deviant cases as both are able to protect their restrictive state monopolistic sports betting systems and to liberalize their cannabis sanctioning regimes by abolishing criminal sanctions for the possession of cannabis for personal use.

Against this background, we present case study evidence from the deviant case Portugal in order to provide insights into what causes Portugal to behave inconsistently (from a perspective of convergence theory) in both sectors.

**Addictive Behavior Policy Change in Portugal**

Portugal has maintained a state monopoly system for sports betting run by Santa Casa da Misericórdia since 1961. This monopolist also offers online sports betting services since 2001. Despite ECJ jurisprudence challenging sports betting monopolies in a series of EU member states and efforts by the EU Commission to open this market, the Portuguese monopoly was upheld. Even when the Santa Casa monopoly on sports betting came under scrutiny by the ECJ itself, the Portuguese government was effectively able to maintain the monopolistic structures.
In the context of drugs, Portugal followed a prohibitive, abstinence-oriented policy approach that criminalized and penalized not only the supply, but also the demand for drugs. This regime – characterized by a substantial interference with personal liberties through the criminalization and sanctioning of drug consumption and possession – reflected a preference for protection of the individual and the society against the hazards caused by drugs. Yet, in November 2000, the Portuguese Parliament adopted a major drug law reform by passing Law No. 30/2000 which degraded illegal drug consumption and possession for personal use from criminal offences to administrative offences and introduced administrative, non-custodial sanctions for both (still) illegal activities despite international legal commitments which called into question the conformity of this step with international law (van het Loo et al. 2002).

We argue that these divergent developments in the Portuguese addictive behavior policy can be explained with the help of the theoretical concept of ‘policy coherence’. Specifically, Portugal could successfully withstand legal conflict due to the high degree of coherence of its policy regime on gambling. Due to this coherence, reflected by a restrictive regime in all sorts of gambling activities including those of greater danger to induce gambling addiction, restrictions of the freedom of services under EU law were evaluated favorably by the ECJ. In contrast, scientific evidence about the unintended adverse effects of high criminal sanctions for drug violations was successfully used by relevant policy entrepreneurs in order to promote a perception of the policy status quo as an incoherent resolution of evident value conflicts.

De-penalizing the possession of illegal drugs

Prior to the 1990s, drug issues in general and drug regulation in particular were not high on the political agenda in Portugal (Chatwin 2011: 132). Drug legislation that criminalized and penalized drug possession has existed since the 1920s. In 1983, a new drug law was passed that strengthened the sanctioning approach and increased the penalties for illegal drug
possession for personal use to a maximum sentence of four years. Further legal amendments were introduced in 1993, which reduced the level of sanctioning only slightly. However, the predominant restrictive approach was increasingly challenged as a result of the tightening of the drug problematic since the early 1990s. Portugal experienced a severe growth in the number of drug consumers, addicted drug users, drug deaths, and arrests for drug-related offences during the 1990s (Chatwin 2011: 133). The deteriorating situation became especially visible through the emergence and rising of an open drug scene in Casal Ventoso near Lisbon. The development of the drug situation in the country increasingly attracted the attention of the political arena. In 1998, the Socialist government appointed a commission (Comissão para a Estratégia Nacional de Combate à Droga) that put forward evidence-based recommendations for a fundamental reform of national drug policy grounded in “humanistic and pragmatic principles” (Chatwin 2011: 134ff; van het Loo et al. 2002: 55. The de-penalization of drug possession for personal use was proposed as one of the key elements of such a new drug policy. Most of the recommendations, including the highly disputed proposal of de-penalizing drug possession, were adopted by the government in its national drug strategy of 1999 (Government of Portugal, 2000 #722). This national strategy served as the foundation of the fundamental drug law reform passed in 2000 (Hughes and Stevens 2012: 102).

This reform was mainly driven by a legitimation crisis of the status quo relying on strong custodial sanctions which was perceived to be unable to successfully control the Portuguese drug problem. Since the strict penal policy was seen to be ineffective, the severe interferences into personal liberties of individual drug consumers which had previously been justified by their very effectiveness now seemed to be an incoherent resolution of the conflict between the value of ensuring individual liberties and the value of protecting individuals from drug-related hazards (Government of Portugal 2000; Hughes 2006: 84ff).

Hughes (Hughes 2006: 127ff) states that the drug situation at the end of the 1990s led to the formation and strengthening of an actor coalition, driven by politicians and health experts,
that favored and advocated a fundamental reform in drug policy and facilitated the adoption of the new, “evidence-based” (Hughes 2006: 133) policy approach by the government. Thus, scientific but also publicly visible evidence that the drug policy maintained so far could not stop drug abuse and drug-related crime challenged fundamentally the reasoning behind the approach. Penalizing drug consumers was not regarded as the solution of the drug problem any longer, but rather as a fundamental part and trigger of the problem (Greenwald 2009: 6).

The obvious incoherence between aims, measures and results of the drug control system led to a strong legitimation crisis of the policy status quo which relied on tough custodial sanctions. This crisis could only be resolved through fundamental changes in the policy and regulatory approach. The 1999 national drug strategy impressively reflects this challenge the government faced:

“In fact, criminalisation is not justified, and it is neither absolutely necessary nor even appropriate to confront the problem of drug use and its undoubtedly harmful effects. Neither the defence of public health, nor the safeguarding of public security when indirectly threatened, nor even protection of the health of under-age users necessarily call for the criminalisation of drug users for the simple fact that they use, possess, hold or purchase drugs exclusively for their own use. […] [A]s experience has also revealed, it has not been demonstrated that to subject a user to criminal proceedings, with all its consequences, constitutes the most appropriate and effective means of intervention […]. On the contrary, in many cases, contact with the judicial system and, sometimes, with prison establishments themselves, together with the social stigma […], produce harmful effects on the desired recovery and, above all, the reintegration of drug addicts. From this it can be concluded that the classification as a criminal offence of mere use of drugs, as well as the possession […] of drugs for use, is disproportionate.” (Government of Portugal 2000: No. 26)
In sum, drug policy reform in Portugal was driven and justified by the gap between the justification for Portugal’s penal strategy on the one hand, and the perceived effectiveness of this strategy on the other hand.

**Protecting the state monopoly on sports betting**

Portugal takes a traditionally restrictive stand on the regulation of gambling activities. Where games of chance are not prohibited, they are provided through controlled channels of effective state-controlled monopolies (Siekmann 2012). The state monopoly on sports betting, which Santa Casa held for land-based and online sports betting, came under scrutiny when the Portuguese Football League agreed on a sponsorship contract with Bwin (a betting company located in Gibraltar). Santa Casa complained that the Football League could not be sponsored by a company whose services were in fact illegal within Portugal. When both contracting parties were sentenced to a fine by Portuguese authorities, legal conflict emerged leading eventually to the activation of the ECJ through the preliminary reference proceeding (Cardigos 2012). While such scrutiny by the ECJ had effectively destabilized state monopolies on sports betting in a number of countries, the Portuguese system was able to withstand the legal tests. The main reason why it could maintain a policy which clearly violated the freedom of services provided under article 56 TFEU were twofold. First, Portugal gave explicit reasons for its restriction of these freedoms. Specifically, the Portuguese policy regime pursued the objective to protect the general interest of preventing gambling addiction and fraud. Second, and even more importantly, the gambling policy regime did so in a coherent and systematic way. The coherence of the Portuguese gambling policy regime was explicitly emphasized in the Opinion of Advocate General Bot and in the ECJ’s preliminary ruling. The moderate measures taken by Santa Casa to extend the

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6 Treaty on the Functioning of the European Union  
7 European Court reports 2009 Page I-07633
provision of games of chance and the moderate advertising activities made the intention to effectively protect consumers credible in the eyes of the ECJ.

The relevance of policy coherence becomes even more evident when considering that the German monopoly for sports betting was effectively destabilized and eventually cracked open in response to ECJ case-law in 2012.\textsuperscript{8} In a series of rulings regarding the German monopoly on sports betting, the ECJ held that while German authorities justified the state monopoly with the intention to protect consumers from the dangers of crime and addiction, the general German gambling policy gave rise to concerns that these objectives were not pursued in a systematic and coherent way. Specifically, the ECJ criticized the lack of “cross-sector consistency” in the German gambling regime which took a much more lenient position on slot machines even though these were shown by psychological research to be much more dangerous for the development of addictions (Hofmann and Spitz 2012). After several German Administrative Courts struck down restrictions on the provision of sports betting by private suppliers licensed in other countries in response to these preliminary rulings, Germany changed its Interstate Treaty relevant for sports betting and decided to provide 20 licenses for private suppliers of online sports betting (Hofmann and Spitz 2012). The coherence of policy regimes is thus an important element to take into account when trying to explain why certain EU member states were better able to maintain their monopolist structure despite high liberalization pressures.

Conclusions

This paper set out to describe and explain dominant empirical trends in addictive behavior policy across 19 different countries between 1960 and 2010. Specifically, it focused on domestic policy regimes on the use and possession of illegal drugs (cannabis) and the supply of and participation in sports betting. In both contexts, policy-makers were argued to face

\textsuperscript{8} Since our observation period truncates developments after 2010, figure 1 does not account for these events.
traditionally, policy-makers have resolved these conflicts differently in both sectors, taking a much more restrictive stand on drugs, then on sports betting. Since then, however, several countries have taken paths towards more liberal policy regimes in both sectors.

To make these different paths explicit, this paper uses two-dimensional descriptions of policy regimes taking into account not only rules regulating the legal supply of addictive substances and activity but also the penal policies which define sanctions for individual consumers violating these rules.

Turning to theories of policy convergence, we are able to explain why most of the countries analyzed in our sample have liberalized their sports betting monopolies but have maintained restrictive drug policy regimes which not only prohibit the use and/or possession of cannabis but also impose substantial custodial sanctions when these rules are violated. Standard explanatory factors cannot account for all of the empirical variation observed, however.

Policy reforms in Portugal appear particularly surprising. Portugal deviates from the dominant trend of EU members to abolish state monopolies on sports betting in favor of market-based license systems. Instead, it was able to maintain its state monopoly beyond 2010 and even beyond the point of writing this paper despite high liberalization pressures. Furthermore, Portugal also deviates from the dominant trend in the sample represented by a maintenance of restrictive drug control regimes including custodial sanctions which can be explained by the international commitments all states in the sample – including Portugal – have agreed to. Instead, Portugal has abolished custodial sanctions for the (still illegal) possession of drugs (including cannabis) completely. Based on case-study evidence from Portugal, this paper suggests that this deviation from the dominant and theoretically expected trend in both sectors can be better understood when taking the concept of ‘policy coherence’ into account.

Specifically, changes of the status quo policy are facilitated when policy entrepreneurs succeed in shaping a perception of policy incoherence. In turn, when relevant actors are able
to maintain a perception of policy coherence, the policy status quo is stabilized. On the one hand, policy incoherence makes policy regimes susceptible to judicial challenges facilitating policy convergence resulting from legal obligations through international judicial shocks. This is because when evaluating the proportionality of measures, which restrict certain fundamental rights, courts rely on an evaluation of whether such restrictions are applied in a consistent way. Policy incoherence can, however, also be essential for destabilizations of the status quo when domestic political actors seek reform. In both cases, scientific evidence plays a key role in determining when policy arrangements appear coherent or incoherent.

With this proposition, the paper also contributes to research interested in the framing of morality policies in general. Specifically, to understand how framing actually affects policy output, it is not sufficient to know about whether issues are framed in a moral or instrumental way. Instead, effects on policy output seem to rely on whether open value conflicts can be shown to be resolved incoherently by the policy status quo. Analyses of framing of moral issues should not stop at determining whether or not moral frames are adopted but should try to identify the discursive role of these frames.

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