

DAMNABLE ARTS, FASHIONABLE GAMESTERS AND ASPINALL'S NOVEL IDEA

BY JULIAN HARRIS

In this and the next two editions of *Casino & Gaming International* the colourful – and instructive – origins of gaming in Britain are explored with a mind to regulatory echoes and parallels today. In this first instalment the ancient antecedents of gaming through to the first half of the 17th Century are assessed ranging from observations of medieval bishops playing dice to Parliament's Gaming Act 1744.



When in 1962 John Aspinall, with the help and support of his friend James Goldsmith, opened the Clermont Club in London's Mayfair, he reinvented commercial gambling in England and provided the spark which albeit indirectly, ignited the popularity of gaming that eventually led to the legal framework of the 1968 Gaming Act. The Clermont was not the first casino to open even under the 1960 Act: in February of the same year in which the Clermont Club opened its doors, the proprietor of the then Colony Club, in Berkeley Square, George Raft, was deported, not because of his fame as a Hollywood film star, or even for operating a casino, but rather his alleged links to the Mafia.

Nevertheless, it was Aspinall whom the press, or some would say Aspinall himself, dubbed 'the father of British gaming'. There was some justification for this; Aspinall was one of those, and many others were to follow, who forced government to recognise that commercial gambling could no longer be effectively prohibited, and would have to be regulated, and this was a concept which was novel in the 1960s. How the Gaming Act of 1968 came about, and the circumstances that gave rise to it, are stories that have been told before, and indeed are subjects which I have addressed previously in this publication.¹

What is also interesting is the degree to which Aspinall and other operators were not inventors, but re-inventors. He was tapping in to a seam of gambling that had its origins in the Restoration period of the 1660s and developed through the 18th century, achieving its zenith during the Regency period of the early 19th century, but which had then lain dormant – in England at least – since the onset of Victorian morality.

Lest it be thought that a look at the origins of gaming clubs and of gaming regulation has no relevance today, there

In common with many other pursuits of life, gaming has given a number of expressions to our language, and the history of gaming is reflected in the historical spread of these expressions. One of the earliest is Julius Caesar's famous remark before crossing the Rubicon: "the die is cast" (jacta est alea). We have the obvious expression "he has played his cards well", applied to the management of fortune or interest, "within an ace" meaning within one point of gaining something. From the 18th century we have the expressions "he has hazarded everything" from the game of Hazard, "he was piqued" from the game of piquet and "left in the lurch" from the French game l'Ourche, where on certain points being achieved, the stake is paid double. It is not generally known that the phrase "to save your bacon (or gammon)" comes from the game backgammon and a reference to somebody being "checked" in their progress comes from the game of chess.

are important lessons to be learned from the past, as will be seen. The American attempt to use prohibition to close the floodgates of internet gambling will in due course be seen to be both damaging and fruitless. Moreover, our own government's muddled attempt at reform has similarly failed to have proper regard to commercial reality as this historical review will demonstrate.

ANCIENT TO MODERN

There is little in the modern world that does not have its origins in the ancient: Plato tells us that dice and gaming originated with a demon called Theuth, although the Greeks generally ascribed the invention of dice to one of their race named Palamedes, a remarkable genius, who also is credited with the invention of weights and measures.

Like so many Greek pastimes, the Romans adopted

gaming enthusiastically; Cicero was a dice player, the Emperor Augustus was passionate about the game and Nero played at 400,000 sesterces. Caligula after a long spell of ill luck in which he lost all his money, rushed into the streets, had two innocent Roman knights seized and ordered their goods to be confiscated, whereupon he returned to his game remarking that this had been the luckiest throw he had had for a long time. Claudius had his carriages arranged for dicing convenience and, academic that he was, wrote a work on the subject. Nor was cheating unknown: Aristotle knew of a way by which the dice could be made to fall as the player wished them. Not surprisingly, it was the Romans who introduced dice to England, so that was one of the many things they did for us.

In early English times there are occasional glimpses of gambling with dice. Ordericus Vitalis (1075-1143) tells us that



"the clergymen and bishops are fond of dice play" and Jonathan Salisbury (1110-1182) calls it "the damnable art of dice playing". In 1190 an edict was promulgated demonstrating how generally gambling prevailed throughout all levels of society. The edict was established for the regulation of the Christian army under the command of Richard I of England and Philip of France during the crusades. It prohibited any person in the army, beneath the degree of knight, from playing at any sort of game for money: knights and clergymen might play for money, but none of them were permitted to lose more than 20 shillings in one whole day and night, under a penalty of 100 shillings, to be paid to the Archbishop – even the church was in on the act - and the army. The two monarchs had the privilege of playing for what they pleased but their attendants were restricted to the sum of 20 shillings and if they exceeded that sum they were to be whipped naked through the army for three days. Shakespeare mentions dice 13 times in seven plays.

Cards by contrast are much more modern, and did not come to Europe from China until late in the 14th century. Their real popularity came with the marriage of Philip II of Spain with our Queen Mary in the 1550s, when the King's numerous and splendid retinue brought with them the passionate love of cards which prevailed in the Spanish court.

A serious attempt at prohibition had however already been made by Queen Mary's more jovial father, some years earlier. As early as 1541, Henry VIII decided it was necessary to pass comprehensive legislation² prohibiting the playing of dice, cards, amongst other activities except at Christmas, although interestingly the ban was not applied to the aristocracy or gentry, but only to the lower classes. Not surprisingly, given the near impossibility of enforcement, the legislation was widely ignored. But, like Richard I in an earlier age, Henry recognised that unlimited gaming might be undesirable in the hands of the irresponsible, as the lower classes would have been categorised.

By the time of the Stewarts, gaming had become well established as a social pastime across all classes of the population, with such games as basset, gleek, primero, post and pair, ruff, all being card games; and tick-tack, mains and hazard, which were dice games, all being popular. At that time, the venues for such games were taverns and private houses, but with the latter being managed rather like private clubs, with food and lodging being offered. These were known as 'ordinaries', because they served a straightforward



meal of fish, fowl, pastries and wine at fixed price so already in the 17th century, gaming was moving out of the home and into more public venues.

The coffee houses which began to open in London in the 1660s were an obvious venue. These were places where the fashion for the new drink could be indulged, politics discussed and newspapers read, with certain houses being frequented by those with particular interests; Lloyds being popular with ship owners and merchants, Child's with the clergy and Jonathan's which developed into the London Stock Exchange. Gambling became popular in many of them, and it may be thought that it was for this reason that Charles II tried to ban them with an edict in 1675: the reality was that the government was concerned less about gaming and more about their reputation as centres for the dissemination of news and ideas. So popular had they become that Charles was forced to back down. Not that Charles II was averse to gaming. Indeed, it was during his reign that the court itself developed gaming in the Groom/Porter's apartment. A court official responsible for ensuring an adequacy of furniture, the Groom/Porter was permitted to keep gaming tables, the grant of which entitled him to supervise, regulate and authorise all manner of gaming.

The Sovereign's involvement in gaming became the subject of press comment, with the Gentlemen's Magazine in

>> THERE IS LITTLE IN THE MODERN WORLD THAT DOES NOT HAVE ITS ORIGINS IN THE ANCIENT: PLATO TELLS US THAT DICE AND GAMING ORIGINATED WITH A DEMON CALLED THEUTH, ALTHOUGH THE GREEKS GENERALLY ASCRIBED THE INVENTION OF DICE TO ONE OF THEIR RACE NAMED PALAMEDES, A REMARKABLE GENIUS, WHO ALSO IS CREDITED WITH THE INVENTION OF WEIGHTS AND MEASURES >>

1730 noting with disapproval that George II and his wife had played cards at Christmas and Epiphany. A year later, in May 1731, by way of contrast with its account of a raid by the High Constable on a notorious gaming house in Holborn, the *Gentlemen's Magazine* reported, without adverse comment, but some irony, that on the same night the King had won 600 guineas, the Queen 300 guineas, Princess Amelia 20 guineas and Princess Caroline 10 guineas while playing hazard at the groom porters³. The office was abolished by George III in 1772, that King being rather less in favour of gaming as a pastime, having banned gaming at court following his ascension in 1760. By 1708, London alone boasted 3,000 of them. The coffee houses were the forerunner of London clubs and housed the gaming rooms where not only did modern business institutions spend their infancy, but where the leisured and professional classes passed their time at cards.

COFFEE HOUSE TO CLUB HOUSE

For gaming, the most famous of all the coffee houses was Whites, founded by an Italian, Francis White, in 1693 with premises in St James Street. Whites was actually called the Chocolate House, but whether cocoa was ever served there is doubtful. By 1702 it was increasingly identified with gaming for the most fashionable gentlemen of the city. Jonathan

Swift referred to it as "the bane of half the English nobility" and the frequenters of the establishment were known as "the gamblers of Whites". The sixth print of William Hogarth's 'Rakes Progress' depicts a distraught man just having lost his fortune in the gaming room at Whites. In April 1773, a fire having destroyed the coffee house, it was rebuilt and reopened as White's Club, the first of many coffee houses to become a club, and the start of the often glamorous but sometimes desperate phase of gaming in London.

The change from Whites, Chocolate House, into a club may be indicative of a more general trend to protect the clientele. In common with others, Whites increasingly became the object of thievery and assault, cheaters and card sharks. Coffee houses were generally open to the public, and became the centre of life for the lawless as well as the law abiding. Others followed the lead of Whites, and began allowing admission only through membership. The concept of memberships, so often, as in the 1968 Gaming Act, tried to limiting the numbers to whom gaming was available, was originally intended as a means of self-protection against criminals and the undesirables.

Throughout the 18th century it was the clubs of London, catering mainly to the nobility and gentry that provided the venue for gaming in London. The leisured classes, however, could also indulge their pastimes outside London, at spas



such as Tunbridge Wells and Bath. In the case of gaming, these two were pre-eminent. Beau Nash, who was familiar with the gaming tables of the European spas, in his capacity as Master of Ceremonies at Bath in the early years of the 18th century, turned Bath into the most fashionable resort town, and at the same time created the archetype of the modern casino.⁴ Oliver Goldsmith wrote that "the people of fashion had an agreeable summer retreat from town.....and wanted somewhere where they might have each others company and win each others money, as they had done during the winter season". Gaming became an integral feature of Bath's appeal, being available throughout the five month season there. Gaming provided opportunities for conviviality and for conversation amongst small groups sitting together.

All of the activity, whether in London or Bath, continued despite various attempts to control gambling, which was not confined to the leisured elite. Together with swearing, drunkenness and frequenting bawdy houses, gaming is one instance of the idleness and immorality of the poorer classes, which came to be regarded as "immediate causes of crime and therefore in themselves direct threats to social stability"⁵.

There was also widespread cheating, often the cause of gambling debts. The excesses were sought to be controlled by Charles II in 1664⁶ who tried to reduce the economic impact of gambling by declaring all securities in excess of £100 for gaming debts incurred "at any one time or meeting" to be void. Cheating would be deterred by giving the loser the right to recover from the winner three times the sum lost, to be divided between him and the Crown.

Then in 1710, Queen Anne extended the provisions⁷ which provided that all notes, bills or other securities were "utterly void" where any part of the consideration was money or valuable thing "won by gaming...." the premium for fraud was also increased to five times the sum lost. This was gaming legislation to protect the player, not to curb gaming. Henry VIII's statute of 1541⁸ also remained in force, making gaming illegal where it took place in a house maintained for that purpose - the offence of keeping a common gaming house - or when it occurred by specified classes, otherwise than at Christmas. This statute had been directed at the gaming habits of the poor, whereas the later statutes sought to protect the wealthy from gambling away their inheritance; no objection was made to their gambling for ready money, provided that was not accompanied by sharp practice.

Gaming had never been unlawful at common law, which is why statutes were necessary to prevent gaming debts from being enforceable. In these statutes can be seen the seeds of subsequent regulation, and indeed not only the objectives of the 1968 Gaming Act but even the key principles of the 2005 Gambling Act. They formed a regime of control that was to endure until the Betting and Gaming Act 1960.

Despite these efforts, gaming continued at an ever increasing level and the efforts at enforcement, carried out in any event mostly by societies for the reformation of manners, waned fairly quickly. Moreover, cheating had become an epidemic by the 1730s leading to the Gaming Act 1738⁹ which declared the games of ace of hearts, pharaoh, basset and hazard to be illegal *per se* and making it an offence to maintain a place where these games could be played. The immediate response was the development of roulette (also called roly poly), a forerunner of modern roulette.

Parliament duly responded with the Gaming Act 1744 which in effect added roulette to the earlier Act.

Commentators on the subject differ about the effectiveness of these attempts at prohibition in the first half of the 18th century, although the most authoritative, Andrew Steinmetz¹⁰ writing in 1870 comments that it throttled gaming in Bath and that the consequence was that the nobility withdrew into their houses to gamble with one another. Whatever the impact, it proved to be a temporary lull, because the second half of the century was to see a huge increase in gaming activity, particularly in the upper echelons of society. (Part 2, *CGI* Q4 October 2008). **CGI**

Note: Images courtesy of the Clermont Club. John Aspinall restored William Kent's Palladian interior at 44 Berkeley Square in the early 1960's with architect Philip Jebb and decorator John Fowler, providing the perfect ambience for the Clermont Club, gaming haunt for London's high rollers. As a post-War London restoration project it was acknowledged for its landmark standard-setting. The Club, now operated by Clermont Leisure, remains a fine architectural jewel and a gaming venue of grand distinction.

- 1 CGI 2006 issue 4
- 2 By 33 Hen.VIII chapter 9
- 3 Ashton (1898), 49
- 4 W Connely, "Beau Nash" (1955), 19
- 5 L Radzinowicz *history of English criminal law volume 2 (1956)*.
- 6 16 Charles II chapter 7
- 7 Gaming Act 1710: 9 and chapter 14
- 8 By 33 Hen VIII chapter 9
- 9 12 George II chapter 28
- 10 A. Steinmetz: *The Gaming Table: Its Votaries Victims*, Vol II

JULIAN HARRIS



Recognised as a leading expert in national and international gambling and licensing law, Julian Harris is highly regarded by both operators and regulators throughout the world. He and John Hagan are the founder partners of Harris Hagan, the first UK

law firm specialising in legal services to the gambling and leisure industries. He, John and other members of the firm have been at the forefront of those advising UK and international operators alike on the opportunities presented by the UK Government's major reform of gambling law.

With over 20 years experience of gambling law Julian has advised some of the world's largest gaming and entertainment industry corporations. He and his team have also advised trade associations, including the British Casino Association and the Casino Operators' Association of the UK. Julian came to specialise in this area representing the Gaming Board for Great Britain (the UK regulator) for five years early in his career.

Julian is an experienced advocate, a respected and sought after conference speaker and the author of numerous articles and papers for gaming and legal publications and in the national press. He is recommended in all sides to the legal profession, and has been described by Chambers Guide as "astute" and "never misses a trick". Julian is a Trustee of the International Association of Gaming Attorneys.