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TEMPLES OF IDLENESS, FASHIONABLE HELLS AND NASCENT REGULATION

BY JULIAN HARRIS

In this the final part of three looking at the history of gaming in Britain, the beginnings of regulatory legislation are examined against a background of elite clubs, gaming parties and moral campaigns. But by the 1830s and 40s a vocal minority, coupled with the change in social attitudes, a gradual withering away of substantial, organised commercial gaming occurred, albeit with some help from the law. That would pave the way for the first Gaming Act 1968, which was the first piece of legislation to comprehensively tackle the subject of gaming.



In the early part of the 19th Century, gaming was endemic throughout society. Then, as now, it was expensive to operate; it might take up to £7,000 a year to establish and maintain a first rate club but, at a lower sector of the market, even Messrs Rogier and Humphrey, convicted in 1823 of keeping a common gaming house had their expenses. They would have needed capital to maintain the bank and income to employ the substantial staff required, including some to scout for new players. While Mr Crockford was expected to supply his members with champagne whilst they lost money at the tables, those patronising even the grimmest hell (gaming house), would have expected to be served at least bread, cheese and beer, and as Nimrod recorded in his article, 'The Hells of London', "a glass of gin is handed, when called for, gratis".

'THIS DREADFUL VICE'

Although different standards applied at different venues, the games were the same. There were table games such as even/odd, rouge et noir and roulette, all of which were based on what we now know as French and American roulette. Roulette was a relatively new game, which one commentator described as being "ruinous of the working classes". Dunne also referred to another dicing game being played in 1823, "the game of krap" (executed with three dice).

Public opposition began to grow at the end of the 18th Century and during the first quarter of the 19th century, with numerous anti gambling tracts. These generally contained a tirade against the malign effects of gaming on individuals, families and social order generally, and continuing with accounts of individuals who had suffered dire consequences, ranging from idleness and indigence at one end of the scale,

to financial ruin and suicide at the other.

There was some concern also about the affect of gaming on the social order, although the assertion that: "to this dreadful vice the loss of America must be ascribed!" is probably overstating it, as was the suggestion that the mania for gaming was "worthy of the decline of our Empire". However, many would have agreed that it was becoming associated with crime and disorder:

"The vice of gaming is contrary to the happiness of man, and ought to be suppressed in a civilised country; it is fatal not only to the individual that it effects but also to the state which tolerates it. It favours corruption of manners; it destroys all emulation for industry; it cherishes the most ambitious to vices in the mine, and/or commence the number of bad citizens."

Benjamin Disraeli in 1845 set the opening scene of his novel *Sybil or the Two Nations at Crockfords* on the eve of the Derby. That what were termed London's gold and silver hells – the elite clubs and gaming parties – were able to flourish could be attributed to the nature of their clientele, which comprised the top strata of society – the aristocracy, many members of the government and the monarchy. In an article 'The anatomy of game', Nimrod commented that Crockfords was above the law: "a fact by no means difficult to account for, when we consider that one half of legislators of the country are members". A theme was developing that the upper classes were setting an altogether poor example to the lower. Even *The Times* stepped in, observing in 1793: "the number of gaming houses, established at the west end of the town is, indeed, a matter of very serious evil; but they are not likely to decrease while examples of the same nature are held forth in the higher circles of life".

In 1844, Parliament established a Select Committee "to enquire into the existing statutes against gaming of every

kind, to ascertain to what extent these statutes are evaded, and to consider whether any and what amendments should be made in such statutes". It was still illegal to keep a "common gaming house", but Bellenden Ker, one of the Commissioners for making a Digest of Criminal Law, observed in evidence to the Select Committee that such a law: "runs counter to the known habits and pursuits of the large portion of society, [and] will never be enforceable. It has never been enforced, except accidentally for the purpose of taxation or some purpose of low gain".

The laws against gaming never have been rigidly or systematically enforced. This was not only because the clubs were patronised by the likes of the Prince Regent, the Duke of Wellington, Disraeli, Talleyrand (French Foreign Minister), Prince Esterhazy and the Count D'Orsay (heir to the French throne); police corruption was widespread and one writer tells us that during the Regency period some gaming house managers spent between £250 and £1,000 annually on bribes. There were profits to be made, and profits to keep. In fairness, there was some truth in their evidence that it was frequently difficult, if not impossible, for them to gain access, given the level of security applied to many of the most notorious gaming houses, and many clubs had elaborate systems for warning players of impending raids, and offered various ingenious means of escape.

Whilst upper class gaming might have been thought to set a bad example, it was not viewed as being likely to cause social unrest or revolution, as the famous London magistrate and author Henry Fielding had concluded in his influential "Enquiry Into the Causes of the Late Increase of Robbers" which had led Parliament to enact the Disorderly Houses Act 1751, the purpose of which was "to encourage prosecuting against persons keeping bawdy houses, gaming houses and other disorderly houses".



"TEMPLES OF IDLENESS"

Despite the increased penalties on conviction for keeping a common gaming house introduced in 1822 "copper hells", which were gaming houses for the lowest strata of society, continued to flourish unabated. In the 1830s, Covent Garden, then a rather down at heel part of London, swarmed with gaming houses, very different from the sort of facilities offered by Mr Crockford.

By the 1730s and 40s, numerous societies, Christian and secular, were seeking to enforce the law in the name of improvement of the poorer classes: evangelism, social conscience and Victorian morality had arrived. What Fielding had referred to as "temples of idleness" were constant and visible reminders of national decadence and low morality. Repeated calls were made by the authors of the anti-gambling tracts in the early 19th Century that the police should exercise greater diligence in bringing prosecutions. In January 1823, the Chief Clerk at Bow Street issued an order quoted 33 Hen VIII C.9 and giving notice "that the magistrates intend to make searches weekly, or at most monthly, in all places where common gaming houses may be". A year later, the writer William Weare observed that the gaming and fashionable hells that had developed over the previous 10 years remained wholly undisturbed by the police.

The Parliamentary Select Committee must have been horrified to hear the police evidence that the reason they were unable to secure convictions was that the law gave them inadequate powers of search, or to gain access. Equally, the judiciary had been horrified by continuation of apparent flagrant breaches of Henry VIII's prohibition. This is evidenced in a case heard in 1842 before the Chief Baron, Lord Abinger. The revelations in the case were largely responsible for the establishment of the Select Committee. Four members of the nobility brought an action to recover from the manager three times the sum lost at French Hazard under 9 Anne C 14, and obtained a verdict in their favour. The court considered this to be a useful lesson to the keepers of gaming houses generally, but also wondered at the apparent immunity from prosecution that the owner had enjoyed for some years.

Perhaps unsurprisingly the Committee received virtually no help from Mr Crockford, who despite repeated offers of immunity, refused to be drawn on any aspect of his club, on the basis that he did not feel at liberty to: "divulge the pursuits of private gentlemen". When asked to whom he had handed over the club, his said that he had given to a "committee" of about 200 gentlemen, concerning which committee and their identity he professed to "know absolutely nothing": he could not even say to whom he had given up the club! He also refused to rise to the repeated bait thrown at him by the honourable Frederick Byng, a Chairman of petty sessions, to the effect that "the increase of gambling houses was entirely the offspring of Crockfords", or that "the facility to everybody to gamble at Crockfords led to the establishment of other gambling houses fitted up in a superior style, and attractive to gentlemen who never would have thought of going to them formerly".

THE PARTY ENDS

The Committee was equally unimpressed with the police record of suppressing gambling houses, steaming partly from an over abundance of caution as to the evidence which the



police required. The result was that only seven houses had been raided in three years, out of the 30 or so thought to have been in operation. The Commissioner plainly understood the Committee's concern, because having given his main evidence on 28th February, on 9th May the Committee was able to report that it had learned: "with great satisfaction on the last day of their enquiry, that a few nights previously" the police had raided some 17 houses known to exist in the Metropolitan area. At about 1am on 8th May, all gaming houses in the metropolis were entered by a total of 17 superintendants, 32 inspectors and 296 sergeants and constables. This was the biggest raid on gaming houses that has ever taken place in England.

Interestingly, one house not raided was Crockfords, which might be thought extraordinary, given that it was the most famous gaming establishment in London. Recalled to explain why, the Commissioner explained that it was a "general club". As a matter of law of course, this is meaningless, given that a club could be a common gaming house, whether or not other activities took place there, but it seems the Committee accepted this explanation which was supported by the Chief Magistrate at Bow Street. Mr Crockford appears to have had powerful friends.

In any event, the upshot of the Committee's deliberations was that they concluded that gambling contracts should be unenforceable at law, which took effect as section 18 of the Gaming Act 1845. The Committee further insisted on the continued prescription on cheating, punishable as obtaining money by false pretences. It also wanted the police to be provided with extra powers of entry and search, and that the offence of keeping a common

gaming house be easier to prove, by the mere presence of "instruments of gaming" in a suspected house or in the possession of people in the house.

The establishment of the Committee leading to the passing of the 1845 Act is a milestone, marking the substantial decline in public gaming, although not necessarily in consequence of the provisions of the 1845 Act, which did little more than to extend previous legislation. Ashton notes that "for many years afterwards professional gaming houses were a tradition of the past", but this is more likely to stem from the changing moral, social and economic attitudes of the Victorians, which were coming to prevail over those of the Regency era. There were occasional scandals from time to time, but little to present the authorities with any great regulatory or enforcement issues, and, whilst the middle classes sought to control the leisure outlets of the lower classes, the interest of the upper and lower classes turned to horse race betting in preference to gaming.

NOW AND THEN

We have seen the origins of gaming and charted its increasing popularity with all classes from the Restoration in the 1660s to its zenith in the early years of the 19th Century during the Regency. Throughout that period any attempt at regulation was designed partly as protection from players getting into debt or from criminal activity, coupled with a half hearted, and for the most part, failed attempt at prohibition until, in the 1830s and 40s a vocal minority, coupled with the change in social attitudes, resulted in a gradual withering away of substantial, organised commercial gaming, albeit with some help from the law.

The position then changed little until the 1960 Act unwittingly led to an explosion of commercial gaming in casinos, quickly taken advantage of by the likes of John Aspinall. He, perhaps more than any of the other operators of the time, recreated what in the late 18th Century Whites and Almacks had sought to provide for the upper echelons of society, and was in many ways the true successor to Mr Crockford. During the 100 and more years from the 1845 Gaming Act until the 1960 Betting and Gaming Act, gentlemen's clubs in London, formerly the centres of gaming on a grand scale, became social meeting places only.

Aspinall revived the tradition of a club where the great and sometimes not so good could meet amongst friends and play at the tables. The market to which he catered is perhaps best illustrated by an incident recounted by John Aspinall's official biographer, Brian Masters, about an incident in the early days when he and his mother, Lady Osborne, were providing gaming. Her rebuke to the hapless policeman who had tried to arrest her and her son for running a "common gaming house" was: "young man, there was nothing common here until you walked in". One can sympathise with the police and their reluctance to raid the likes of Crockfords in the early 19th Century, and the sort of rebuke they might have received at the hands of the then clientele, such as the Duke of Wellington!

The enormous growth of casinos, following the 1960 legislation and throughout the 1960s eventually led to the passing of the Gaming Act 1968, which is another story. Where that Act was different from everything that had gone before, from the reign of Henry VIII onwards, is that it was the first piece of legislation that comprehensively tackled the subject of gaming, and instead of merely addressing the

protection of players, or trying to eradicate gaming, for the first time it accepted the existence of gaming as a fact, and provided a detailed, and in many ways draconian, framework within which it could legally be offered. That came about following the re-emergence of gaming as a popular pastime in a new liberal age which, if not quite returning to the excesses of the Regency period, had certainly shaken off the moral, social and religious strictures of the Victorians. **CGI**

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