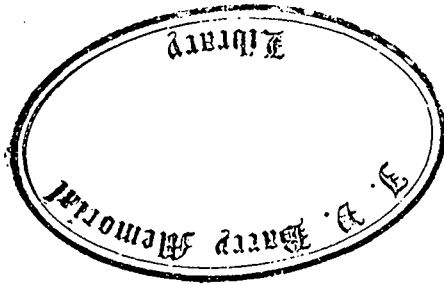


THE LEGAL CONTROL OF CASINOS

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NB. THIS PAPER WHICH WAS SUBMITTED TO THE VICTORIAN GOVERNMENT
BOARD OF INQUIRY INTO CASINOS IS PERSONAL AND DOES NOT
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Gambling has been succinctly described as being

"A major recreational institution, a minor vice, a large scale industry, a powerful source of crime and political corruption, a perennial social problem, a fascinating psychological puzzle and an intriguing pastime."⁽¹⁾

It is obviously an escape, whether from boredom or reality; and it seems to appeal to those who court the unexpected by risking what they have in a kind of self-sacrificing self-fulfilment.

Obviously a phenomenon of so many aspects and ramifications is difficult to encompass conceptually, let alone control legally. Attracting a huge public participation on the one hand and continuous criticism on social, economic and moral grounds on the other hand, it may be said to have had wholehearted support but only grudging approval. The options before any policy-making organisation dealing with casinos are the following:

- (a) No legalisation: in which case it must be accepted that illegal casinos will continue in some form with possible corruption in the police and politics.
- (b) Legalisation in the form of clubs with restricted club membership and government controls. This implies private rather than public ownership.
- (c) Legalisation with government ownership and open access. e.g. in hotels.
- (d) Some combination of (b) and (c),

and these will be discussed in this paper. But first it is necessary to get the gambling perspectives straight.

(1) Edward C. Devereaux Jr. "Gambling" in the International Encyclopaedia of the Social Sciences - pp. 52-61

The problem which is gambling has its taproots in antiquity. It goes back so far in human history that it can vie with prostitution as the world's oldest profession.

History

Uncertainty creates the opportunities for gambling. Uncertainty is a pervading characteristic of all human existence. From the farmer gambling on the weather to the investor on the stock exchange the uncertainties of life involve risks which have a price. The balancing-out of risks by insurance or state welfare often involve a doubtful calculation on the length of life itself.

It is no revelation to observe therefore that divination and gambling were closely related to history and in one sense or another have continued to be associated throughout the long chronicle of human endeavour. Science and economics have entered the areas of probability and prediction but there is always the unexpected and the excitement of having something to win or lose on a given outcome is never eradicated by logical predictions based on probabilities. Even great odds seem to enhance the glitter of the prize. Fortune-telling, gambling and confidence tricks have always been connected with deceit and knavery. Throwing the bones to understand destiny or fate is not far from casting lots or working on a system to control Lady Luck.

Dice emerge with written records and showed up in the earliest archaeological diggings. They were originally four sided

and made from the knucklebones of the hinder feet of sheep, goats and calves. These were found numbered on four sides in ancient Egyptian excavations and imitations in glass and shell were plentiful. A gaming board of gold and silver inlaid with crystal, ivory and kyanos and dating from around 2000 B.C. was uncovered in archaeological diggings in Crete. Headless arrows appear to have been used for both gaming and divination by the Babylonians. The development of the six-faced dice should probably be attributed to the Arabs and the principle of the roulette may be traced to the spinning coconut⁽²⁾ but card games emerged a good deal later. It is an interesting speculation that the relative absence of gambling in tribes living at customary levels is probably due to the use of magic to eliminate chance. In such simple conditions, everything, even the totally unexpected, has to be accounted for by either the natural or supernatural: therefore betting on outcomes is less attractive: it is more interesting to throw the bones to determine who it is that is manipulating the people and their environment.⁽³⁾

Gambling then is a kind of secularised divination which emerged when societies were emerging from their dependence on magic and augury. North American Indians are said to have bet on the different colours of pips or stones, the Siamese on whether the openings in musselshells turned up or down. Roman children played caput aut navis (heads and tails) with coins; and the extent of gambling

(2) See Tylor "Primitive Culture" i 80.

(3) See J.L. Paton "Gambling" in the Encyclopaedia of Religion and Ethics : T.T. Clark Edinburgh : 38 George St: Vol.6 pp.163-7

in India may be gauged from the story of Nala and Damayanli in Mahabharata (iii 59-61) where a prince loses all that he has.⁽⁴⁾

In Elizabethan England there was no holding the amount of gambling, so that eventually the Queen licensed it. The earliest English statute in 1542 had been designed to arrest the widespread drift from traditional archery, the practice of which was important for national defence. The statute made reference not only to gambling having drawn people from archery but having also been a source of impoverishment, crime and the neglect of divine service. The 1542 law prohibited "sundry new and crafty games" of a gambling nature and it proscribed the working class from

"play at the tables, tennis, dice, cards, bowls, clash, cloyting, loggetting or any other unlawful game."

The prohibition evidently failed to prevent the spread of gambling so that the Queen eventually bowed to the inevitable. In granting a patent to her Groom-Porter, Thomas Cornwallis, to license gambling houses, the Queen acknowledged

"the inclination of men to be given and bent to the aforesaid pastimes and play and that no penalty of the laws and statutes aforesaid hath heretofore restrained them."

The patent thus granted with an apparant sigh of resignation proved to be lucrative to the extreme for successive Groom-Porters down the years.⁽⁵⁾

(4) Ibid

(5) Gamini Salgado "The Elizabethan Underworld" London : J.M. Dent and Sons Ltd; 1977: p.36

Gambling gathered momentum and by the second half of the seventeenth century the accumulated wealth of the mercantile period gave rich young bloods large fortunes with which to gamble. The possibility of gambling at this level having an important effect on the social structure of the country led to yet further attempts to control it. When in 1664 an attempt was made to curb the excessive gambling, it was really the possible consequences of the

"uncontrolled exchanges of mortgages, bonds, conveyances and other securities."

on the distribution of wealth and power in the kingdom which was of the greatest concern.⁽⁶⁾ This was in fact the first statute to be directed at gambling in general apart from game playing: and it restricted the recovery of gambling debts.

However the rich who like to gamble had influence in high places so that it was not long before the interest in controlling gambling shifted back again to restrictions on the lower rather than the upper classes. It was low-stake gambling which attracted the ire of the church and which eventually came to be perceived as the greater evil. In 1698 lotteries were made illegal and other controlling Acts were voted into law in 1710 and in 1751. The Acts of 1845 and of 1853 suppressed (or, at least they tried to suppress) public gaming houses but did not touch such private clubs as Tattersalls. In 1854 it became an offence to advertise that a house was being kept for the purpose of betting - but this applied only to the ready-money betting

(6) 16 Charles II c.7 An Act Against Deceitful, Disorderly and Excessive Gaming 1664 - quoted by David Miers "Eighteenth Century Gaming: Implications for Modern Casino Control" in James A. Inciardi and Charles E. Faupel "History and Crime" London/Beverly Hills: Sage Publications: 1980: p.173.

of the working classes and did not affect betting by letter, telegram - or later by 'phone such as the rich might use. In 1868 an Act prohibited the playing of pitch and toss in the streets and the Vagrancy Act of 1873 extended the illegality to all kinds of betting and wagering in public places. There were also a number of local by-laws to the same effect in the many municipal and rural areas.

In 1901 the House of Lords appointed a Select Committee

"to inquire into the increase in public betting among all classes" and to recommend "whether any legislation are possible and expedient for checking the abuses occasioned thereby".

The inquiry very quickly confirmed an enormous increase in professional bookmaking and working-class betting. The Committee suggested the restriction of betting to the race courses and sports grounds and gave consideration to the licensing of bookmakers and perhaps developing a totalisateur system. However it eventually rejected both these measures as likely to involve the legal recognition of bookmaking and the eventual permission to recover betting debts by lawful process.

Clearly the thrust of legislation to control gambling with the possible exception of the statute passed in the seventeenth century to avoid the social consequences of the high stake wagering of property - was to reduce its evil effects on the lower classes of society. So some writers have condemned the controls on gambling as class-biased (i.e. protestant middle-class work ethic versus the

working class culture) but Downs, Davis, David and Stone have preferred to translate this into the values of leisure and consumption being opposed to the values of work and production.⁽⁷⁾ It is significant therefore that organised religious opposition to gambling was, in general, correlative with the propagation of the protestant work ethic in Europe and America. The evils of losing money which one could ill-afford and the immorality of benefits accruing to those who do not produce are still very widely condemned by the ministers of the various denominations which can be classed as protestant. Professor Stolnick has pointed out that whilst gaming offends the capitalist ethic by its demoralising losses or its prospects of getting rich from chance alone it also offends the Marxist revolutionary ethic by diverting attention from the realities of oppression to the fantasy of a lucky dip.⁽⁸⁾

Jews have generally permitted if not approved gambling. It is often regarded as a waste of time and not exactly in line with the expectations of the Jewish community; but flat opposition in Jewish circles is rare. There is in fact no reference to gambling amongst the Israelites until the period when they were living in exile in Egypt. Then we read of some

"forsaking Jahweh and forgetting the Holy Mountain,
preparing a table for Luck and filling up mixed wine to
Fortune"(Is:65:11).

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- (7) D.M. Downes, B.P. Davies, M.E. David and P. Stone "Gambling, Work and Leisure" London: Routledge and Kegan Paul 1976.
(8) Jerome H. Skolnich "House of Cards" Boston": Little Brown & Co. 1978 p.20.

They did however, seek to discover the Divine Will by drawing lots for the allocation of land (Numb:26:55), for selection for an appointment (Acts:1:26), to organise a roster (1 Chron:24:5), and as part of the method for identifying offenders (Jos:7:16:,Jonah:1:7). Peasants rarely wager their lands however and it was not until the Jews came in closer contact with the Babylonians that they succumbed to the gambling which was rife in the towns.

From the early days it would appear that the Christians had some problems with gambling. Gambling equipment was found in some of the catacombs and the clergy were forbidden by Church Councils to engage in gambling. Tertullian wrote

"If you say that you are a Christian when you are a dice player you say you are what you are not because you are a partner with the world." (de Spectaculis XVI)

However the Catholic Church has been relatively tolerant to gambling in moderation. It has always deplored gambling to excess but has found it difficult to condemn gambling as being immoral if it is honest and kept within bounds. Usum non tollit abusus.

Because gambling is really so many different things, the question of what gambling is only serves to confuse the issue. Are games of skill excluded - how are these to be distinguished from chance? The courts have sometimes gone to ridiculous lengths to draw fine distinctions between the legal and illegal. It can even be argued that, in legitimate business, risk-taking and competitiveness form an essential part of the deeper meaning of economic choice.

So Ambrose Bierce once wrote that

"The gambling known as business looks with austere disfavour upon the business known as gambling".

There is something so akin to gambling in the trading that takes place on the Stock Exchanges - especially in commodity and futures trading. There is at least one case recorded of a judge finding one such contract to be unenforcible under the Gaming Acts.

Australia

In a selected year in the mid 1970s Australia's State Governments collected a total of \$172,800,000 in taxation from legal forms of gambling. This included \$91,700,000 from racing, \$38,000,000 from lotteries \$42,600,000 from poker machines and \$500,000 from casinos. The tax taken from legal gambling is thought to be rising at some 25% annually.

In the 1970s it has been suggested that the amount changing hands annually as a result of gambling was somewhere between \$3,000 million and \$3,500 million. This was about three times the amount which was at the time being spent nationally on the social services.⁽⁹⁾ At this rate Australians were identified by a United States sports magazine which did a worldwide survey as spending more on gambling per head of population than the people of any other country, i.e. between \$160 and \$250 for every individual.⁽¹⁰⁾ The

(9) The Australian Encyclopaedia. Article on "Gambling" Vol.3 p.131

(10) Ibid.

same source mentions a survey conducted by a firm of marketing research consultants in Sydney and Melbourne in 1970 which would seem to underline the moderation of the indulgence in gambling. While seven out of every ten adults engaged regularly in some form of gambling the average winnings were not high and losses rarely exceeded \$2 a week.⁽¹¹⁾ However, information on gambling is not always readily available. That which is accessible comes from tax collections and the various forms of supervision. How much was wagered illegally, the extent to which people indulge in illegal casinos or bet on races through SP (starting price) bookmakers can only be imagined.

The first legal casino was opened at the Wrest Point Hotel at Sandy Bay, Hobart, on 10 February 1973. It cost about \$10 million to complete and is operated by Australian National Hotels Ltd. It was licensed by the Tasmanian Government to operate games which included blackjack (ponton), chemin de fer, French and American roulette, dice and punto banco. From the profits the Government took 5 per cent if they were less than \$25,000 a month, but up to 30 per cent if the profit exceeded \$125,000.⁽¹²⁾ As Federal Hotels the same group now operates other casinos in Launceston, Alice Springs and Darwin.

Now on the Queensland Gold Coast, plans have been made for a \$166 million 588 room hotel and casino with the largest convention

(11) Ibid.

(12) Ibid.

accommodation in Australia (taking 2,500 people). A Victorian home builder and construction group, Jennings Industries led a consortium called Jupiters Ltd which won the contract, but as the licensing legislation was about to be tabled in the Queensland Parliament there were reports of doubts being raised about the casino operators' expertise and overseas experience and about gaps in the equity partnership.⁽¹³⁾ Jennings had already purchased the six-hectare site - Broadbeach Island on the Gold Coast Highway which they had originally intended to use for housing. Interestingly enough the original consortium appears to have included the Superannuation Fund Investment Trust (SFIT) which is owned by Commonwealth Government Employees - and 45 per cent of the equity was to be offered for public subscription.⁽¹⁴⁾

In New South Wales the Lusher Committee of Inquiry into Casinos has recommended that private interests be granted licenses to operate casinos. That state began its legalised gambling in 1932 with State Lotteries which financed hospitals and the Opera House. With TAB now operating and benefitting consolidated revenue the proceeds are available for improvements in government services. Conversely private enterprise on the race courses have made fortunes for many. Lotto too has been operated by private interests.

The Question of Legalising Casinos

There is no longer any real discussion in Australia about the legalisation of gambling although there have been few if any

(13) See Australian Business, 8 July 1982 pp.18-20

(14) Ibid.

studies to evaluate the costs and benefits of the state lotteries, T.A.B.s (Totalizator Agency Boards) and the privately operated football pools and numbers games such as Lotto which have been thriving in legal form for a number of years. Though poker machines are not permitted by every state they are in great demand, and where not allowed there are influential campaigns for their legalisation frequently mounted by service or professional clubs which envy the enormous amounts being collected by their counterparts in the permissive states. On state borders there are towns with poker machines which do a brisk tourist trade with people from the prohibition states at week-ends and holidays. The arguments for and against having legal casinos then are not so much moral as economic and crime-preventative.

Morals

Even so it would be unscientific to ignore the moral issues. The facts need verification however they be construed. It is not just that whilst there may be thousands seeking the legalisation of casinos or enjoying the legalisation of the other forms of gambling available, there are some thousands of others who still object to the waste and who castigate gambling as a devaluation of the proper function of money as a reward for effort. There are still influential public lobbies which regard gambling as a vice per se. It is the fact that casinos flourish on the foolish and the curious. It has been said that what attracts people to gambling in the casinos is the spectacle of other people playing. The losers come back to recoup, the winners advertise their good fortune, bringing more people to the

the tables. And those who are not so naive, the professional gamblers, or those capable of making money on the side are often amoral or have undesirable connections which place the standards of the better casinos at risk. It is not only that some people find it immoral, but also the intelligence becoming more readily available that law and morals are not as easily disentangled as a century or more of positivist thinking has led us to believe.

It is true that there are many forms of immoral conduct for which there may even be a consensus of ethical condemnation but which have never been regarded as proper subjects for legal prohibition. Lying, misleading, neglecting the aged or cornering supplies are some of these - though the law has intervened in some special circumstances when the public interest seemed involved. The construction of "public interest" may have moral overtones however, and it is also true that when the law has tried to regulate such questionable behaviour it has never been very successful. There is certainly a rather sorry history of the law trying to control gambling, prostitution, alcohol consumption and even drug abuse. The public demand encourages supply, and different types of black markets develop.

All of this has led to increasing pressure for keeping the law out of morals altogether. It has been a particularistic and ambivalent movement however, as is demonstrated by more popular demands to use the law to prohibit racial or sexual discrimination or to promote environmental control. To establish the irrelevance of morals for law, stress used to be laid on the futility of making laws which would fall into disrepute because there was little or no

prospect of them being effectively enforced. Now it is argued that laws are necessary to promote desirable reforms like removing discrimination or promoting environmental concern. Once laws were criticised for being ridiculously out of touch with public opinion and social conduct when it could be shown that people ignored them. Now however, even if out of line with public sentiment, laws are held necessary to educate the public and to promote the higher standards required. Whether the law should lead or follow public demand is therefore an ethical as well as a legal issue ... and this has relevance for casinos.

It is strongly argued that the law cannot prevent people taking drugs, gambling, becoming homosexual or publicly commercialising sex. So the laws should be repealed. But, by the same token the law obviously cannot prevent people stealing, committing burglary or being fraudulent, or robbing others or perjuring themselves. Indeed for such offences the police clearance rates are very low - and we know that most such offences are never even reported to the police. Yet there are no campaigns for their decriminalisation and the law does not seem to lose any respect just because there are so many people committing such crimes with impunity. So moral sentiment has differential effects on the law and its enforcement. So many people are using marihuana that it is thought necessary to legalise it : but widespread tax evasion provides a political platform for tightening the laws. There were once strident demands for a decriminalisation of incest and homosexuality so as to "keep the law out of the bedroom" - where, of course, evidence is almost impossible to obtain or to corroborate. Now there are equally strident demands to take the law back into the bedroom - for incest

and a sexual assault of a husband on his wife to be more sternly punished, the latter being incorporated in the definition of rape in some states.

The moral effect of legalising casinos is therefore difficult to assess. There is an obvious "shop-window" effect which will have its influence on many who would not gamble if the means were not provided and perhaps advertised. There is the effect of this on minors. There is the obvious market effect of tourists needing other forms of entertainment - maybe salacious entertainment which will not be an inconsiderable issue for those most concerned with public morals. There are all the effects on motivation, on the reasons for earning money and looking for disproportionate returns which have economic spin-offs never properly researched.

Pathology

There are so many people gambling that it seems patently ridiculous to talk of the disease of gambling. If it is a disease then it is a very popular one. On the other hand, drinking is no less popular and for some people at least it is distinctly pathological. There are pathological gamblers as well as pathological alcoholics, pathological drug addicts and perhaps pathological sex devotees. Freud thought that Dostoevsky used gambling masochistically⁽¹⁵⁾ and there is little doubt that others use it sadistically on their families and friends, commanding attention by their constant need for more money to wager. Fuller finds in gambling an answer to unresolved

(15) Dickerson M.C. "The Effect of Betting Shop Experience on Gambling Behaviour" Ph.D. Thesis Univ. of Birmingham 1974 p.129

Oedipal conflicts⁽¹⁶⁾ and others have found a link between the self-indulgence, self-centredness and unproductiveness of masturbation and the empty absorption of people gambling in casinos.⁽¹⁷⁾ The possible consequences of legalised casinos on the production of such pathologies in even a tiny minority of cases cannot be discounted entirely. Such people are usually disproportionately troublesome in the population and they absorb in the long run far more resources than the indulgence of their weaknesses might imply. It has been shown from example that open gambling of the betting shop or casino variety incorporates certain reinforcing features which raise excitement and promote a move from modest to excessive wagering. To discourage this reinforcement factor is to possibly reduce the profits in special cases and to increase the need to make more money by extending the gambling to larger numbers. Either way the encouragement of some pathological elements would seem to be unavoidable.⁽¹⁸⁾

Would such problem individuals not be a problem anyway? If gambling were illegal, would they not still find ways of expressing their deeper-seated conflicts in equally disruptive ways? The data to answer this question has never been gathered. A convincing experimental design would be difficult to construct anyway and might not be employable because of the ethical questions it might raise. It seems reasonable to assume however that the opening of casinos, i.e.

(16) Sigmund Freud "Dostoevsky and Parricide in Halliday and Fuller (eds) "The Psychology of Gambling" New York : Harper Colophon 1974 pp.157-174

(17) Peter Fuller "Gambling : A Secular 'Religion' for the Obsessional Neurotic" in Halliday and Fuller op.cit. pp. 1-114.

(18) See Robert Lindner "The Psychodynamics of Gambling" in Halliday and Fuller op. cit. pp.237-8

the expanding of existing opportunities, would widen the scope for the expression of such pathological traits. It would bring out more of what is now hidden or unexpressed and the imitative effect on others of its overtness cannot be ruled out.

Of course there are pathological extremes flowing from almost any kind of human behaviour. Affluence encourages greed so that crime appears to rise more in periods of affluence than depression.⁽¹⁹⁾

It is not quite as simple as this and there is a complex literature⁽²⁰⁾ but the correlations are there. Development across the world has been correlated with corruption. More people in towns increases the likelihood of alienation, mental ill-health, family disruption and perhaps child neglect. It is always a trade-off of benefits and costs. When the decision is made on casinos, there will be costs in various forms of pathology, individual and social. It might be argued that they would have occurred anyway - if not in casinos then elsewhere. But casinos are facilitating agencies for such extremes. The question is, are they worth it?

The Function of Law

One position would be for everyone to do exactly as they liked with no legal interference at all. Why should not people have gambling if they want to? Why should they not have casinos if they want them? In particular, if they are willing to share the profits with the government which can then invest in better hospitals

(19) See Satyanshu Mukherjee et al "Crime Trends in Twentieth Century Australia" Sydney : Allen & Unwin p.129.

(20) See J. Braithwaite "Inequality Crime and Public Policy" Routledge and Kegan: London 1979.

or welfare services the gamblers would appear as public benefactors. Since the demand for gambling is so widespread anyway and all attempts at control have been patchy and unsuccessful - resulting only in black markets, illegal enterprise and the corruption of police and politicians would it not be wiser to accept what seems to be inevitable?

This extreme is unacceptable for any democratic society because it is impossible for everyone to do as he likes. The limitation is always the effect of the behaviour on the rights of others to do as they like. So every society has rules. Of course a person might claim the right to gamble with what is his: but what is meant by "what is his?". The fact that a person now holds money or property does not automatically mean that it is his to do with as he pleases. Apart from the obvious possibility that he may also have unfulfilled obligations at home or in his business which he will have to leave unfulfilled if he loses the money, the question of social consequences can never be ignored. The economic effect of everyone burning "what is his" would induce a law against this kind of arson because of the effect upon the total community. There are regulations on the disposal of property on death and there are family rights to property which the law will protect. It is rare therefore that ownership is so untrammelled as to facilitate gambling it away.

This is why history shows society always trying to control gambling in some way: and the fact that it has not succeeded very well is no automatic condemnation of the attempt. In fact, just as we accept that a rule is proved by an exception so it is illegal gambling (in a society which prohibits it) which is an overt

indication that the people generally are not involved. Once gambling is legitimised then the people generally are more likely to become involved even against their better judgement, because the enormous amounts of money behind gambling permit the promotion of a variety of ancilliary entertainments which bring people within eye-view of the gambling itself - and this has its own effect. It is not just the legislation of gambling which has to be considered but the normalisation of it. Getting it promoted from something unusual, risque and a trifle exotic to a regular part of daily life is one of the objectives of the casino business. The basic question in legalisation is therefore "If the law can't fully control it, should this be a sufficient reason to promote by legitimation its open expansion?". For this is undoubtedly what will happen. It is not just legalising a supply which meets an existing public demand but authorising a widespread campaign (overt or covert) to greatly increase that demand and to change the lifestyles of a number of people now unaffected. Typical of this is the widespread media advertising in Australia to popularise "Lotto" and the "Pools". Films of winners being informed of their good fortune and of everyone "having a go" are cases in point. Poker machines are similarly popularised by their sounds of clattering coins, their neon lighting and winning buzzers. None of these are aimed at the committed. They are there to induce the non-committed.

Unfortunately there is rarely enough hard data to support the moral or value-laden evaluations which are often made of the effectiveness, or the performance (or lack of it) of the criminal justice system. For too long, in the arguments for and against decriminalisation and legitimation, too much has been taken for

granted or has acquired the status of fact just because it seemed to be reasonable. It is frequently suggested for example that to legalise casinos would be to forestall organised crime, to dry up a major source of income for the underworld. But this has never been unequivocally established. It may be true; but if it were true to the extent usually believed, it is difficult to account for the obvious and avid interest manifested by organised crime syndicates in the movements for more liberal gambling laws. No pressure seems to be brought to bear to frustrate these attempts to take away existing profits - rather is the interest an interest in legalising the present illegal operations. A former chairman of the Chicago Crime Commission has argued that the repeal of Prohibition in the U.S. did not really hamper the activities of the gangsters who had now no need to bootleg, but shifted their interests so as to continue to exert a very powerful influence over the whole of the legitimate liquor business.⁽²¹⁾ So too it appears that legalised lotteries in nineteenth-century America were eventually permeated with graft and corruption - so that permissive legislation pushed back the threshold of actionable illegality without in any way decreasing the socially undesirable conduct.⁽²²⁾

Whilst in Australia, casinos in Tasmania and the Northern Territory appear to have operated with none of the negative spin-offs in terms of organised crime that are often associated with casinos in the United States. It has to be remembered that they are in areas which are small and more easily controlled and which do not have the

(21) Virgil W. Peterson "Gambling - Should it be Legalised" Journal of Criminal Law and Criminology 40 259-329

(22) Ibid.

traditions of organised crime as do Sydney, the Gold Coast and, to a lesser extent Melbourne, and even so the extent to which the casinos already serve questionable interests cannot yet be known. The extent to which the casinos may be serving as an outlet for the illegal cash economy or as a convenient means of laundering questionably acquired funds is difficult to establish. The extent to which "side games" are organised or other vices indulged will come to light only when they reach unmanageable proportions.

For example, though the legalised club-type casinos in Britain are rightly respected for the controls which are exercised, these are not always sufficient.

"I remember I met him later in Miami after he'd been kicked out of London because of his mob connections. They made him the scapegoat, but the cops never cleaned up the hidden ownership of the club"⁽²³⁾ (my underlining).

So wrote Vincent Theresa (described as "the only high-ranking" Mafioso ever to break the Honoured Society's code of silence") who was later to come to Sydney to give evidence on the casino question - only to be deported within hours. He provides information about his "gambling junkets" to legalised foreign casinos and the way he hired rooms at a famous London hotel for the side-games. He gives details about the way in which money can be skimmed from receipts before profits are counted. He also describes how "front" organisations can be used to hide the identities of the real owners. Peter Mass who wrote Joe Valachi's papers concluded:

"Cosa Nostra ... continues to rake in, however, a huge income from illegal gambling and from "skimming" - taking a slice of the receipts off the top before taxes in any venture with a

(23) Vincent Teresa with Thomas C. Renner "My Life in the Mafia": London: Hart-Davis, MacGibbon Ltd 1973 p.178

heavy cash flow - vending machines, cigarette machines, jukebox routes and, perhaps most lucrative of all, licensed gambling casinos."⁽²⁴⁾ (my underlining)

In the same strain Bob Bottom has described an incipient criminal conspiracy by illegal casino owners in New South Wales to surreptitiously obtain control of any legal casino which might be approved.⁽²⁵⁾ In fact Bottom says that Sir Eric Willis alleged in Parliament on 30 November 1977 that the illegal casinos had been established in N.S.W. in expectation of legalisation.⁽²⁶⁾

None of this can be regarded as the kind of hard evidence which might be adduced by formal prosecutions and convictions. It certainly does not flow from systematic research. But even if only half true, there is justification for questions about the ability of authorities to control what might happen. The enormous sums involved attract not only the fraudulent to beat the bank but the organised criminals to siphon off a share of the legalised profit. A report of the New South Wales Police which is reproduced in the Moffit Commission proceedings expresses the fear that if organised crime interests succeed in gaining control of licensed clubs "it is easy to visualise that they would use them for their main money-earners - drugs and prostitution".⁽²⁷⁾ With licensed casinos, the opportunities for making money on the side or using the wagering to legitimise illegal profits from illegal operations elsewhere are so important that one can expect very great care to be exercised not to spoil such a profitable enterprise by over-crude indulgence in drug trafficking or too obviously commercialised sex.

(24) Peter Mass "The Valachi Papers" New York : Bantam Books: p.292.

(25) Bob Bottom "The Godfather in Australia": Sydney : A.H. & A.W. Ree Pty Ltd : 1979 p.103.

(26) Ibid p.115

(27) Ibid p.65.

To exercise the consistently tight control of clients and staff to avoid such abuses is a formidable task. At best, if properly provided it probably costs more than the profits might justify : at worse, it is not properly exercised and becomes no more than a "front" to hide the illegal profits being made at a variety of different levels.

The Economics

Profits will obviously flow from gambling whether it is legal or illegal. The idea therefore of diverting the gambling profits from the private to the public purse has a commonsense appeal. Unfortunately it is not so simple. It is not just a case of private profits from gambling buying new chandeliers or better neon lights whilst public profits would help deserving people or be devoted to wealth - generating capital investment. Undoubtedly the bloated incomes from gambling serve to concentrate wealth, a large proportion of which may be invested by the profiteers into capital investment to benefit the economy. It has also been indicated that poker machines in clubs in the country towns of N.S.W. have provided funds for recreational or sporting activities or to attract a better standard of entertainment, thus enhancing the quality of life for local people. The question to ask is where the money came from. What other activities elsewhere are suffering. It is the opportunity costs which have to be considered, i.e. the other uses to which the same funds could have been devoted. It depends very much on the amount

of money and resources, on the sources of the money and resources which flow through the gambling system. If the gambling operation is big enough then funds for productive enterprise may be diverted in a fashion which distorts the economy and benefits the few rather than the many. Obviously illegal gambling makes private profits which also affect the economy, but the very illegality of the operation keeps the advertising to a minimum, restricts the appeal to the population at large, and makes management and control so much more difficult. Even the corruption which needs to be practiced is neither easy nor safe and there is always the danger of a scandal and a massive campaign for a total shut-down of operations. This means that people employed in the business have less security of tenure and have to be paid more to cover the risks of prosecution. As all these disadvantages disappear with legalisation the economic significance of gambling greatly increases.

Unfortunately the precise dimension of this increase is difficult to establish. Since 1973 the British Gaming Board has produced estimates for clubs' financial returns to the Board: but these are based on the clubs' total "drop" i.e. money exchanged for chips, and underestimate turnover since chips change hands across the counters.⁽²⁸⁾ The U.S. experience suggests that there are ways of skimming funds off before the official record is prepared - and if this happens in Las Vegas where tax men are sometimes present for the nightly count, it can happen elsewhere.

(28) See "Gambling : A Review of the Literature" H.M.S.O. Home Office Research Study No.42

Assuming that it is true that \$3,000 to \$4,000 million is spent on gambling in Australia every year, this is about the same as the national debt. The figure is probably much higher. It is not exactly a loss to the economy - merely a transfer of wealth. If it is used by the winners to buy goods or to invest in business enterprises which produce goods and employ people, then the concentration of wealth in this way might be justified. Unfortunately there is no guarantee that the funds will be used in this way. Moreover what might be beneficially used by the winners has to be withdrawn from the beneficial use to which it might have been put by the losers. To get costs and benefits then, more precise information about the amount of money and its disposal is required.

On the other hand, the 1950 Report of the Social and Industrial Commission of the Church Assembly and the U.K. Royal Commission on Betting, Lotteries and Gaming 1951 both acknowledged that gambling had some entertainment value and implied that a form of service was therefore being bought by the gambler with his money so that it could be argued that '... the State should not interfere with the amusements of its citizens, except so far as it can be shown that these amusements involve serious social consequences.'

How does one interpret "serious social consequences"? In the individual cases the dangers are to relatively few people; in the collective sense the effect on morale, productivity, inflation (via additional wage demands for gambling etc.) are difficult to assess.

There is however one economic social consequence which cannot be evaded, namely the increasing dependence of the governments on income from gambling. As costs rise and it becomes increasingly difficult to raise taxes, gambling is a soft option for any authority. It seems justified by the translation of gambling profits back into public services. The difficulty is that this can become an addition - particularly as states in financial difficulty watch states with legal gambling receiving enormous incomes with which to meet their public expenditure, and perhaps extend benefits which are never without vote implications for those in power. Needless to say this invests gambling with power of its own to influence public policy - even where the operations are publicly controlled.

The Options

Taking into account the above information and acknowledging that it is far from conclusive, the question remains for the authorities as to how to respond to a public demand for legal casinos. The options as already shown appear to be

- (a) No legalisation: in which case it must be accepted that illegal casinos will continue in some form with possible corruption in the police and politics.
- (b) Legalisation in the form of clubs with restricted club membership and government controls. This implies private rather than public ownership.
- (c) Legalisation with government ownership and open access, e.g. in hotels.
- (d) Some combination of (b) and (c).

Despite the problems associated with (a) I am inclined to prefer it to the other options. Legitimation shifts rather than solves problems, and in the present situation in Australia I gravely doubt the competence of available staff (or obtainable staff) to maintain controls effective enough to avoid organised crime getting a foothold. This is much truer of the major capitals and states than of Tasmania or the Northern Territory. There are problems attaching to scale of operations which confound identical principles.

The negative character of this choice is a tribute to caution rather than to hard evidence - as the above review will show. It is dictated however by the knowledge that it is not easy to retract once the legitimation is approved, and it is particularly difficult to change direction once the authorities become increasingly dependent upon the profits to avoid unpopular taxation.

Then, assuming that (a) is not considered either desirable or feasible and some form of legitimation is required, I would opt for public rather than private ownership so that all rather than some profits should be publicly available. This in my view would be the only hope for closing the door effectively on the manoeuvring of questionable interests to obtain private control. In a democratic society it is almost impossible to block off the various devices for infiltration via "front" companies, land purchases, or buying in on the stock exchange. Our existing controls of ordinary businesses which become fraudulent give no confidence that, in an area as profitable and as sensitive as this, it would be possible to control the operation of private interests - or to maintain such a consistent

vigilance that future problems would not arise. In this connection the enormous amounts of money already obtained from drug trafficking, tax evasion, prostitution, pornography etc., which are seeking an outlet should not be overlooked. These days investments in casinos are almost guilt-edged.

Public ownership of club-type operations might be the best way of providing controlled, legalised casinos.⁽²⁹⁾ There may be no precedents for this and it may require careful formulation but servicemens' clubs and organisations for entertainment may provide some appropriate models. This would restrict the openness of the gaming if the British pattern of club membership were accepted. Therefore there would be a conflict between the desire to maximise profits by keeping the gaming open and perhaps providing other entertainments to attract customers - and the limitations which reduce patronage. In this respect I would endorse the comment of the U.K. Royal Commission on Gambling (Cmnd 7200, 1978 para 17.1) that the underlying principle ought to be that casino facilities should be "sufficient but no more than sufficient to satisfy an unstimulated demand for gaming which might otherwise seek an illegal outlet".

Finally if the special circumstances of Victoria are taken into account there may be no small virtue in delaying a decision

(29) There is no assumption here that public ownership completely eradicates the problems of infiltration. There can be corruption and there are always ways of exerting pressure politically. It can happen - but it is easier to do something about it where ownership is public.

long enough to observe the progress of the venture into private legalised casinos by Queensland - and probably New South Wales (though a decision has yet to be taken by the N.S.W. Government at the time of this submission). The most profitable course for any government at this time is to learn from the experience of others: it is a rare advantage which Victoria has now, but which will not be repeated.