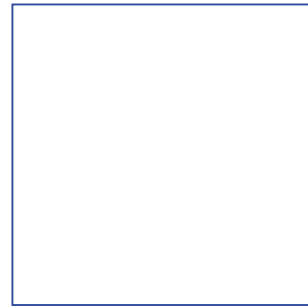


chapter three

The Central Dilemma

- 3.1 The most difficult general issue that we have had to solve concerns the familiar dilemma between the desire to permit free choice and the fear that such choice may lead to harm either to the individual or to society more widely.
- 3.2 Our proposals generally move in the direction of allowing greater freedom for the individual to gamble in ways, at times and in places than is permitted under current legislation. This move to greater freedom is balanced by rather tighter controls on the freedom of young people to gamble and by some tighter controls over those who provide gambling services.
- 3.3 Our detailed proposals are explained in the relevant parts of our Report; our purpose here is to explain why we have moved in the direction of deregulation.
- 3.4 We have attempted to balance, as best we can, conflicting views about the importance of individual freedom and about the types and seriousness of harms that can accompany the activity of gambling. Fortunately the membership of the Gambling Review Body includes a range of views both about the benefits and costs of gambling and the appropriate role of regulation so that we have had valuable discussions among ourselves without always reaching complete agreement. We recognise that there will be the same (or wider) range of views among the general public.
- 3.5 The current state of regulation is based on the view that gambling should be tolerated rather than encouraged. By "encouraged" we mean that the general public should not be faced by unlimited opportunities to gamble and by uncontrolled inducements to do so (e.g. by unregulated advertising). Many forms of commercial gambling can only be conducted on licensed premises and at limited hours. There may be limits on the types of game, on the number of machines, on the size of stake and on the possible winnings. A period of 24 hours may have to elapse before one becomes entitled to play. The numbers and locations of gambling outlets are restricted.
- 3.6 Some of these regulations are based on the need to reduce the risk of criminal involvement, particularly among those who provide gambling services. As mentioned, if anything our proposals suggest tighter regulation for this purpose. The difficult issues relate to those regulations which limit the freedom of the individual punter.
- 3.7 The case for such regulations is based on a number of views, all of which deserve respect. They include the following:
 - gambling can cause serious financial and psychological harm to some of those who do it (and to their families)
 - gambling is intrinsically undesirable because of the attitudes it sustains or encourages
 - the activity of gambling can adversely affect the lives of those who do not themselves gamble.
- 3.8 Those views are not completely separate. For example, the difference between the first two may be a matter of degree but the distinction is useful. In the first case we are talking about a condition which most people would recognise as involving harm. The person involved can cease to play a normal part in social and family life and may, indeed commit crimes to sustain the activity. We might call this the "danger" argument. The second involves what might be described as moral disapproval. The gamblers may be perfectly happy in their activity and functioning perfectly normally as citizens but others may feel that gambling is at best a waste of time and at worst engenders greed and envy. We might call this the "moral" argument.
- 3.9 The third view includes a number of different ideas. One is that problem gamblers may directly harm others through criminal acts or through abandonment of their family responsibilities. Dealing with such gamblers may impose costs (eg of law enforcement or health treatment) on the rest of society. That can be thought of as a third party extension of the danger argument. Another example of what economists would call "externalities" is the effect on a neighbourhood of gambling activities, either through the buildings themselves or through the behaviour of those who frequent them. There is a third way in which non-gamblers may be affected which can be thought of as an effect on society as a whole. People who disapprove of gambling might dislike living in a society in which gambling is widespread. This might be thought of as a third party extension of the moral argument.
- 3.10 We have had to try to decide how valid these statements may be in themselves and how far they may justify the regulation of gambling. It is one thing to believe that gambling is morally wrong and quite another to believe that such a view justifies regulation. A belief that gambling can cause harm (in the danger sense) to an individual does not necessarily lead to the



conclusion that the individual's behaviour should be regulated. (Still less does it lead to the conclusion that the behaviour of all gamblers should be regulated.) There is usually rather greater agreement that potential harm to third parties, at least in the danger sense, can justify restrictions on individual actions.

There is another and important feature of the Royal Commission's philosophy: it is that gamblers should invariably be made aware of what they are letting themselves in for when they gamble – in other words what they may lose. (Gamblers usually know, or think they know, what they may win.)

3.11 There is a widely held view that the state should respect the right of the individual to behave as he or she wishes, provided there is no harm to others. That view (the "liberal view") is held with varying degrees of robustness by the population of this country (and by members of the Review Body). Most current regulation of such activities as drinking, smoking, publication of erotic or violent and pornographic material (in books and films) represents a compromise between the danger argument (whether private or social) and the liberal argument.

3.13 We accept the last point completely; but we depart from the Rothschild Commission (and from current legislation) somewhat in relation to some of the views expressed or implied in the first two points. It comes down to our view of what is meant by "socially damaging excesses." We take a rather narrower view of what that phrase includes. That in turn leads us to suggest the dropping of the principle that facilities offered should respond only to unstimulated demand. This conclusion has only been reached after considerable debate among ourselves, and our detailed recommendations represent a compromise within a range of views about the role of the state in controlling or influencing individual activity. The recommendations of the Rothschild Commission clearly reflected a similar compromise. As that report said:

3.12 It may be helpful to explain how our approach differs from that currently embodied in the law and endorsed by the Royal Commission on Gambling¹ (the Rothschild Commission) in its report published in 1978. We quote below an extract from that report, which was itself based on words from the previous Royal Commission, which had reported in 1951. It summarised its general beliefs "about the aims and proper limits of legal control over gambling in a society such as ours", as follows:

All of us, however, agree that the gambling public should be told the facts about the types of gambling in which they indulge and that some measure of paternalism is desirable in some cases. These matters are dealt with at greater length in various parts of our Report, but the differences of emphasis among us reflect the great difficulty in drawing a line between what some may call paternalism and the "it's their own business" attitude.

To interfere as little as possible with individual liberty to take part in the various forms of gambling but to recommend the imposition or continuance of such restrictions as are desirable and practicable to discourage socially damaging excesses and to prevent the incursion of crime into gambling.

3.14 We have experienced a similar difficulty, although we have drawn the line in a rather different place. We can describe our approach by reference to the three potential arguments for restricting individual choice given above.

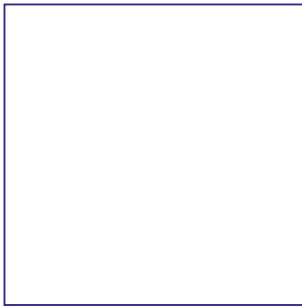
To support broadly the principle that the facilities offered should respond only to "unstimulated demand". This is a principle about which it is not easy to be specific. . . . It implies, for instance, the maintenance of curbs on certain forms of advertising, and it has up to now been taken to imply the limitation of amenities in betting shops. . . . The principle applies in different degrees to different types of gambling. It is obvious that too wide and too literal adherence to it could result in nonsensical recommendations, such as, to give an extreme example, that there should be no football because it stimulates betting on the pools. But the principle has some sense. People should not be pestered: they should not be distracted from their real work, even if betting at appropriate times boosts the morale of those engaged in repetitive or otherwise uncongenial tasks (as the late Ernest Bevin is said to have believed).

The danger argument

3.15 In chapter 17 we discuss at some length the evidence about the causes, extent and consequences of problem gambling. One important point is that we do not have definite answers to many of the questions that concern us. A similar point was made by the Rothschild Commission and it made recommendations for further study. Rather more is known now than then, but we are still having to rely on our judgement rather than on firm evidence.

3.16 It is clear that some individuals become obsessed by gambling to the point at which they cease to function as normal members of society and may do great harm not only to themselves but also to their families and possibly to the general public (for example through criminal activity). The existence or risk of problem gambling provides in our view the most important

¹Rothschild Commission (1978)



potential reason for restricting the individual's freedom to gamble. In its evidence to us the Better Regulation Task Force² says:

We do not think that the issue of problem gambling should influence the nature of gambling regulation; however the industry has a social responsibility to ensure that it contributes to measures to help problem gamblers.

3.17 It also says:

Regulatory measures may be required to ensure that vulnerable consumers are not targeted specifically by the gambling industry. However, government regulation should not have the effect of preventing mature consumers from exercising their right to spend their money as they see fit. We would urge you to consider self-regulation, such as a code of practice endorsed by the industry.

3.18 On the face of it, the first comment quoted above would suggest a wholesale deregulation of gambling insofar as the activities of the gambler are concerned (although there might still be controls over who could provide gambling services). The second comment might suggest some forms of control.

3.19 Our proposals do increase the freedom of adults to gamble how, where and when they might wish but they do not go as far as implied by the submission of the Better Regulation Task Force. We recognise that we now live in a more liberal society as far as individual activities are concerned and that this change of attitude can be recognised in proposed changes to licensing hours for pubs etc. But we believe it would be wrong to ignore completely the risks attached to gambling even if they only affect a limited number of individuals. As we explain in Chapter 17, some forms of gambling can particularly encourage repetitive play to the point at which the punter may suspend rational judgement and display all the signs of addiction, with subsequent financial and psychological harm. Evidence from countries where there has been considerable deregulation does suggest that the extent of problem gambling can grow significantly. So we are not proposing the degree of deregulation seen in some parts of the world. That means inevitably that we are limiting the freedom of individuals who could safely participate in such forms of gambling.

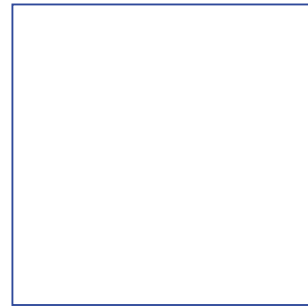
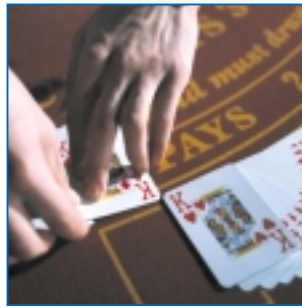
3.20 While we are recommending deregulation for adults, we are recommending some tightening of regulation as far as children are concerned. We discuss the general question of age limits in chapter 22. We have been particularly exercised by the question of young people's freedom to play on fruit machines. Persons under 18 may not enter betting shops or casinos. In

licensed arcades, they may only play on certain types of machine. Persons under 16 may not buy lottery tickets. However children of any age can play on fruit machines in certain premises. They can play on limited types in arcades in seaside resorts, in motorway service stations etc and they can play on higher pay-out machines in pubs and clubs. This freedom is unique to the United Kingdom and is the result of historical accident. We accept the evidence that children are particularly vulnerable to the harms associated with gambling and that fruit machines are a special problem. Although we recognise that these problems only affect a minority of those children who play on them, we propose some further limits on this activity for the under-18s. Our proposals are set out in chapter 23. Some of us would have gone further and removed fruit machines from all premises to which children have access. We do not, of course, believe that all children are irresponsible below the age of 18 and suddenly become responsible on their 18th birthday; but 18 seems a sensible, if arbitrary, age limit to choose.

3.21 Our cautious approach has also guided our response to two further issues; alcohol and ambient gambling. It is well established that alcohol reduces inhibitions. There is convincing evidence that it impairs judgement about gambling and can cause people to gamble excessively. Although current regulations allow gambling and the consumption of alcohol to be combined on certain premises we do not believe this freedom should be extended. We do not therefore propose permitting betting in pubs or the serving of alcohol in betting shops. Ambient gambling refers to the provision of gambling facilities on premises whose main purpose is not gambling. The most obvious form of ambient gambling is the sale of National Lottery tickets and scratch cards in a large number of retail outlets. Another example is the provision of gaming machines in pubs. Our cautious approach suggests we should not add to ambient gambling. This provides a further reason for not allowing betting in pubs. We go further and propose the removal of gaming machines from unlicensed premises.

The moral argument

3.22 We have received submissions stating that gambling should be restricted (or banned completely) because it is morally wrong. The Rothschild Commission provided a valuable summary of the views it had received from various religious authorities but noted that none of those who gave their views urged that the law or public policy should be determined by their religious beliefs. The moral objections to gambling include the idea that it represents an opportunity to gain at the expense of others and to gain a reward without commensurate effort.



3.23 It is difficult to judge how far current regulations are based on a moral disapproval of gambling but it is hard to escape from the sense that gambling, even if harmless, is at best an unworthy activity. The comments of the Rothschild Commission are quite revealing and show how they struggled with the issue.

3.24 In their discussion of betting offices the Commission makes the following comment:

The objection that punters are wasting their time is a moral or possibly an aesthetic judgement. As it happens, none of us is attracted by the idea of spending an afternoon in a betting office. But the people who frequent betting offices have chosen to enjoy themselves in their own way and we think that in a free society it would be wrong to prevent them from doing so merely because others think that they would be better employed in digging the garden, reading to their children or playing healthy outdoor sports.

3.25 That seems to place the Commission firmly in the liberal camp. But, as we have said, that generally liberal approach did not prevent them from retaining the “unstimulated demand” principle, which certainly limits the freedom of the individual since, among other things, it limits the numbers of betting shops and casinos. We have already quoted the words they used in that context with their reference to those engaged in “repetitive or uncongenial tasks”. Some of us find those words intolerably paternalistic with the implication that gambling is acceptable (though not to be encouraged) for the workers, whose lives are so limited, but not something that could appeal to the educated. We believe that the core of the issue concerns what the Rothschild Commission called “social excess”.

3.26 The expression itself is completely unhelpful, since an “excess” is, by definition, something of which one has too much and is therefore to be avoided if possible. The difficult question is when does one believe that gambling is causing social excess. What we believe is involved is the idea, mentioned above, that liberalisation of gambling might produce a state of society which was undesirable, even if those who were gambling were not unhappy. Let us suppose, for example, that a more relaxed approach to regulation greatly increased the number of gambling establishments and also raised both the number of active gamblers and the time (and money) they spent gambling. An adherent of the liberal approach would welcome this development as a sign that consumers were better able to spend their time and money as they wished. But an alternative view would be that the

quality of social life had deteriorated, that Britain had become less civilised, and that the state has a responsibility to prevent this from happening. To give a concrete example, it could be argued that we should prevent (as the law currently does) the construction of mass arenas where people spent all day (and night) playing on slot machines.

3.27 We found it extremely difficult to resolve this issue. Even if there were agreement, which there was not, about the state’s legitimate role in this area we would find it difficult to determine where the limits should be placed. Our terms of reference do require us to take account of the wider social effects of our proposals. We take that as meaning that we should have some concern for the effects on society as a whole or on local communities of allowing increased freedom to establish gambling outlets.

3.28 Our proposals necessarily represent a compromise among rival views. We all agree that regulation can be justified by the following objectives (as set out in the reports of the Gaming Board):

- permitted forms of gambling should be crime-free (both in terms of those who operate them and the players they attract), conducted in accordance with regulation and honest
- players should know what to expect and be confident that they will get it and not be exploited
- there should be some protection for children and vulnerable persons.

3.29 Our view of what those objectives require guides most of our discussion and proposals. That list does not include the avoidance of social excess explicitly. But our proposals do take account of the wider social concerns that the expression implies. For example, since we are uncertain about the effects on individuals and on society as a whole of changes in regulation we suggest fairly cautious moves in the first place, with scope for further deregulation in due course if the results seem acceptable. We also recognise that some localities might choose to limit the number and scale of gambling establishments because of their effects, in the widest sense, on the local community. That seems to us to be a legitimate task of local government. Finally we recognise that our proposals are unlikely to be acceptable unless they broadly match public views about what is appropriate for our society. We have made our best efforts to achieve this but recognise that the final say must rest with Parliament.