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Beer orders: the changing landscape in the 1990s

> We now need modern laws to deal with what is an old problem. They should allow people to enjoy their leisure as they wish, provided that they do not disturb others. (Jack Straw)

> We may note at this point that the continental café has been held up as the type of establishment at which reform of the public house should aim. We think there is some tendency to idealize the conception of the average continental establishment. (Royal Commission on Licensing, 1931)

While the public health lobby became more influential in the 1970s and 1980s, it struggled to have an impact on policy. The political mood, which had swung towards the liberalisation of the drinks trade in the early 1960s, did not change under Margaret Thatcher's Conservative administration. If anything, it became more firmly established. This is not to say that there were no concerns over drink and drunkenness. Legislation designed to tackle the problem of drunken anti-social behaviour through the use of exclusion orders was introduced in 1980, as were special regulations to tackle football hooliganism by restricting the sale of alcohol on trains. In 1988 a wave of public concern over drunken violence – captured in the newly coined phrase 'lager lout' – emerged after the Association of Chief Police Officers (ACPO) published a report showing that drunken disorder usually associated with urban centres was starting to proliferate in more rural areas. The ACPO report not only led to a flurry of media activity, but also to two detailed studies into non-metropolitan violence – one funded by the Home Office, and a later report funded by the newly formed drinks industry organisation the Portman Group.[1] The 'lager lout' brought the issue of social disorder back to the centre of public discussions of alcohol just as the policy trend was moving towards increased liberalisation of the trade.

However, neither of the reports into this new phenomenon of small-town drunken violence suggested that it required a rethink of overall

approaches to alcohol retail. The Home Office report focused on the need for more careful management of a new breed of 'youth pubs', as well as the need to avoid the creation of 'congestion sites' where there were high concentrations of youth pubs and takeaways in a small area.[2] The Portman Group study made similar observations, but also called for trials in the extension of opening hours. Both suggested that fixed closing exacerbated problems of drunken violence by chucking large numbers of drunken people onto the streets at the same time.[3] Indeed, rather than triggering more repressive controls on licensing, the findings of the studies into 'lager louts' had their most significant long-term impact in persuading the Government that a liberalisation of opening hours was needed in order to address problems of antisocial behaviour associated with town and city-centre drinking.

Public concerns over 'lager louts', then, signalled a return of social order issues to the centre of the debate on drink. However, they also reinforced the existing principle of government intervention, which was to regulate the activities of problematic minorities rather than target consumption among the general population. In 1985, the number of pubs per adult living in England and Wales was actually lower than it had been twenty years earlier.[4] These trends muted calls for tighter State controls of the alcohol market. At the same time, the neoliberal model of consumer choice which drove government policy militated strongly against restrictive market intervention of any kind.

Most changes to licensing law, therefore, were liberalising measures. The abolition of the of the 'afternoon gap' in 1988 meant that for the first time since 1915 pubs were able to open from 11a.m. to 11p.m. In 1995, all-day opening was expanded to cover Sunday trading, thereby rolling back the special restrictions on Sunday hours that had been in place since the middle of the nineteenth century. However, while these changes provided tangible evidence of the continuing liberalisation of licensing law, there were some more fundamental changes going on at the same time.

Cutting the tie

As has been noted above, while the drinks industry underwent a series of changes in the 1960s and 1970s (the introduction of keg beers and lager, the consolidation of national brewing, the expansion of domestic drinking, etc.) many long-standing features of the market remained effectively the same as they had been for centuries. The most important of these was the tied house. In the late 1980s three-quarters of all public houses were tied to brewers,[5] and this brought with it exactly the same concerns regarding consumer choice and quality that prompted the Beer

Act of 1830 and fuelled the mistrust of the 'trade' among liberals and socialists in the early twentieth century. The monopolisation of the drinks market by property-owning brewers seemed to be utterly intractable: it had accompanied the rise of mass production, it had shaped the physical development of the 'English pub', and it had survived at least 150 years of attacks from campaigners of every political stripe. All that, however, was about to change.

In 1989 the Monopolies and Mergers Commission (MMC) published a report on the supply of beer which looked specifically at the question of tied houses. The findings amounted to a scathing condemnation of the 'complex monopoly' that existed as a result of brewers controlling the production, distribution and retail of beer.[6] Not only were 75 per cent of pubs found to be tied to brewers, but of the remaining 'free houses' around half were controlled by brewers through loan ties.[7] Furthermore, the vast majority of tied houses were owned by one of the 'big six' brewers, who also produced 75 per cent of the beer consumed.[8] The MMC report specified the various characteristics of the existing monopoly and declared each of them to be against the public interest. In particular, it stated that tied houses allowed brewers to inflate artificially the price of beer by restricting competition and it allowed them to strangle the development of independent breweries by ensuring that the pubs which big brewers owned only stocked the beer that they produced.[9]

The report's authors stated that their goal was to 'free up the present system to the benefit of greater competition, while maintaining the British public house as it is widely admired'.[10] To that end, they set out a series of radical proposals. Most dramatically, they recommended that all brewers who owned over 2,000 pubs should be forced to sell their remaining stock or stop brewing altogether. Since the 'big six' brewers owned almost 35,000 pubs between them at the time, this would mean that 22,000 pubs would be put onto the open market.[11] The MMC also called for the abolishment of loan ties, thereby further shrinking the extent of control brewers would have over the beer supplied in ordinary pubs. Finally, the MMC called for brewers to allow all landlords in their remaining tied houses to stock at least one 'guest beer' not brewed by the parent company.

The MMC report was a bombshell. Rather than attempting to tackle the tied-house problem through licensing, it tackled it through the statutory regulation of the free market (and, in doing so provided a reminder that 'free' markets are also the creation of State intervention). The report was accepted by the Department of Trade and Industry and formed the basis of the Supply of Beer (Tied Estate) Order – otherwise known as the 'Beer Orders' – which was introduced in December of the same year.

The MMC proposals did not enter the statute books unscathed. The limit of 2,000 pubs was modified in the Beer Orders so that brewers only had to divest half of their stock over that number (e.g. Courage, who owned 5,000 pubs, were only required to sell half of the remaining 3,000). More crucially, the MMC had proposed that no brewer, after selling their excess pubs, should be allowed to enter into long-term supply agreements with the new owners. This made sense: if a brewer sold a pub cheaply to a property investor as part of a deal which effectively continued the old supply arrangements, then little would have changed in terms of consumer choice. Nevertheless, that requirement was removed from the Beer Orders in their final form. When the regulations were introduced, brewers were left free to draw up contracts of sale which included long-term supply agreements, and most of them did just that.[12] Furthermore, because the guest beer regulations only applied to pubs which continued to be *owned* by brewers, pubs which were sold off did not even have to comply with that requirement.

The impact of the Beer Orders has been described as 'by far the biggest shake-up the British brewing industry has ever seen in its history'.[13] Two things, principally, followed. Firstly, 11,000 pubs were put onto the market, many of which were bought up by retail companies who specialised in selling, but not producing, alcohol. These retail companies – which would become known as 'pubcos' – quickly began developing branded outlets (Slug and Lettuce, Pitcher and Piano, Scream, O'Neill's, All Bar One, Edwards, and so on) which soon became familiar features of high streets across the country. The pubcos were able to buy properties cheaply, draw up supply agreements with producers, and negotiate ever more substantial discounts as their retail interests expanded. Within a decade 30 per cent of all pubs would be owned by a retail chain of this kind, with the five biggest pubcos controlling 23 per cent of the overall market.[14] At the same time, the established brewers looked to separate their production and retail arms as swiftly as they could. In 1991 Grand Metropolitan sold its brewing interests to Courage, and four years later Courage sold its brewing interest to Scottish and Newcastle. Courage and Grand Metropolitan set up Inntrepreneur Estates to manage the pubs that they owned as a separate interest. In 1995 Allied Breweries, having already transferred its brewing to a joint venture company and rebranded itself as Allied Domecq, sold its last brewing shares to Carlsberg.[15] In 2000, Whitbread sold its brewing operations to Interbrew and concentrated instead on retail. Bass did the same, although the Competition Commission ruled that the sale breached competition rules and Interbrew had to sell most of their interest in Bass Brewers Ltd on to the American brewing giant Coors.

The details of mergers, restructures and takeovers since the Beer Orders are labyrinthine. What matters is that the seemingly immutable system of vertical integration between brewing and retail which had dominated the alcohol market in England for over two centuries suddenly ceased to exist. The power of the brewers, which had for so long been seen as unfairly influencing the development of alcohol policy, was now augmented by the power of vast retail organisations many of whom were subsidiaries of global investment companies (such as the Japanese investment bank Nomura) with an interest in both retail and property management. The number of tied pubs fell by just over 30 per cent in the decade after the Beer Orders (from 45 per cent to 11 per cent of the total), but that fall was matched almost precisely by the rise of pub chains who simply entered into supply agreements with an even more concentrated brewing industry.[16] Whatever the intentions of the Monopolies and Mergers Commission in 1989, they failed to predict that by severing the tie between production and retail they would usher in a new age of voracious commercial expansion based on brand-oriented monopolies which would prove at least as detrimental to their conception of consumer choice as what had existed previously.

The Beer Orders were revoked in 2003 following a report from the Office of Fair Trading which suggested that the problems the MMC had identified no longer existed. By then, however, the alcohol retail landscape had been transformed almost beyond recognition. Few people were concerned about the now quaint problem of tied houses; instead, what had emerged as the object of public concern was the proliferation of theme bars and superpubs on the high streets of towns and cities across the country. The Beer Orders had made the mass pub retail chain a reality, and it was these outlets which were starting to become the focus of increasingly vociferous complaints about the drinking habits of young people. However, the saturation of high streets with huge numbers of themed drinking outlets was not only the result of the Beer Orders. A number of other factors – political, economic and sociological – contributed to transformation of alcohol retail in this period. We will briefly outline these factors here.

The end of 'need'

Throughout this history, we have seen that the contours of everyday drinking culture have been carved out by the clash of two great forces: the economic power of property-owning brewers and the regulatory power of licensing magistrates. The question of how the discretionary power of magistrates was exercised, and how they defined the 'need' for new licences within their jurisdiction, triggered many of the most seminal events discussed in this book. The 1830 Beer Act, the Permissive Bill, *Sharp v.*

Wakefield, the battles over compensation, and the debates over municipal control all hinged on the problem of who should decide how many public houses were required in specific areas and how that power should be applied. Many of the fiercest political battles in the history of the drink question were fought out on the territory of 'need'.

It is extraordinary, then, that the principle of need should have ended up being derailed in the space of three years by a series of seemingly minor events: a licence hearing in Nottingham, an Inter-Departmental Working Group meeting, a report from the Better Regulation Task Force, and a Good Practice Guide distributed by the Licensing Clerks' Society. Nevertheless, between 1996 and 1999 these incidents – all largely unnoticed by non-specialists in the wider world – went a long way towards consigning 'need' to history.

The question of 'need' had faced its first significant post-war challenge with the publication of the Erroll Committee report on licensing in 1972. This Committee was established, under the leadership of Lord Erroll of Hale, following an MMC report on tied houses in 1969. The findings addressed issues including opening hours, licensing procedures and legal drinking ages. 'Need' was identified as 'one of the most important matters' that the Committee had looked at.[17] In a chapter dedicated to the subject, the Committee concluded that magisterial discretion was 'unnecessary and inappropriate' and that the principle of need was 'out of date' and should be abandoned.[18] So far as the granting of licences was concerned, the Committee insisted that the 'only relevant consideration [was] market demand', and it was landlords and brewers, not local magistrates, who were qualified to decide whether or not that demand existed.[19]

The Erroll Committee report failed to produce any legislative change, and was badly received by many who objected to its liberalising tone.[20] However, its discussion of 'need' illustrated the stark terms by which the logic of the free market countered the principle of magisterial discretion. The Erroll Committee's rejection of 'need' was not based on an abstract theory of rights but on a simple economic equation: if there is a licence application, then there must be need. In previous eras any such claim would have triggered impassioned debates over the responsibility of moral and legislative authorities to manage the desires of drinkers. And even in the early 1970s it remained a subject which demanded the kind of extensive exegesis afforded it by the Erroll Committee. In the neoliberal 1990s, by contrast, the notion that a licence application justified itself simply by proving *ipso facto* that a market demand existed came increasingly to be accepted as a kind of self-evident statement of the obvious. Under the pressure of a rampant free-market ideology, the idea that the market should *not* be left to decide such things began to look like a rather curious

anachronism. In the 1990s, 'need' came to be seen by many as something which could simply be dismissed as a mere inconvenience.

The inconvenience of 'need' manifested itself in the problem of ensuring consistency and fairness in licensing decisions. It had always been the case that some licensing districts had applied their powers more firmly than others, and in the late 1980s and early 1990s many brewers complained that licence applications were unfairly harder to come by in certain regions.[21] In 1993 a Home Office consultation paper on licensing proposed the removal of justices' discretion on the grounds that the use of 'need' had led to both confusion and inconsistency.[22] Three years later, a Departmental Working Group on Licence Transfers was asked to consider the findings of this consultation paper and, in a meeting held on 7th March 1996, the members of this obscure committee decided that 'any system of codified ground for refusal [for licence applications] should *not* include a test of "need"'.[23] The surprising result of this brief finding was that, as far as the Home Office was concerned, it settled the issue: from then on official guidance proceeded on the principle that need was no longer to be considered by licensing magistrates.[24] According to one licensing lawyer, the Government quickly began to put pressure on magistrates to fall in line by suggesting that intransigence over 'need' could lead to licensing being taken out of their hands altogether.[25]

Two years later the influential Better Regulation Task Force (BRTF) produced a report on licensing legislation. Their report objected to the use of 'need' by local justices and insisted that market demand should not be massaged by the use of regulatory power.[26] The BRTF also went further than simply suggesting new guidance for the application of the law; it proposed that licensing should be managed by local authorities working to nationally set guidelines rather than by magistrates working to their own subjective principles.

The BRTF report was taken extremely seriously by local magistrates who saw in it a serious threat to their long-standing control over the licensing process. In response the Justices Clerks Society included in its *Good Practice Guide* for 1999 the recommendation that local magistrates abandon the use of 'need' as a criterion when making licensing decisions. Although, strictly speaking, *Sharp v. Wakefield* remained valid, and while the overall proportion of licence applications being refused did not fall dramatically,[27] in practice local magistrates were now being directed by their own official body to proceed as if 'need' was not a valid consideration. Having stoked the furnace of the drink question for a century after 1830, the principle of need was being quietly snuffed out by a handful of administrative paperwork.

A lost generation

The Beer Orders and the challenge to 'need' cleared the legislative ground for the transformation of the high street alcohol retail market. However, two other factors drove the economic investment required to put that infrastructure in place. One was the response of the alcohol industry to the threat presented to it by the emergence of rave culture in the late 1980s, and the other was the response of local planning authorities to the progressive dereliction of city centres following recession and the shift of capital towards the suburbs. A number of detailed and critically incisive studies of these processes have been published elsewhere.[28] What follows is intended primarily as an overview which will identify some key issues as regards the place of recent developments in the larger history of drink discourse.

Put at its simplest, the development of rave culture from 1987 onwards threatened the alcohol industry because the drug of choice for an ever increasing number of young ravers was Ecstasy, not alcohol. Indeed, in the early years of the rave scene alcohol was not simply bypassed in favour of Ecstasy, it was positively shunned. It may seem strange to an outsider looking at today's alcohol-centred youth culture, but there was a time in the late 1980s and early 1990s when for a significant number of young people alcohol was decidedly unhip. Furthermore, these were precisely the kind of new consumers the alcohol industry needed: young, pleasure-seeking and with access to high levels of disposable income. The response of the alcohol industry was to begin a process of rebranding – of both its drinks and the locations in which drinking could take place – in order to position alcohol as a party drug: to sell drunkenness as a psychoactive experience on a par with the illicit drug experiences that young people were increasingly comfortable experimenting with.[29] While celebrating drunkenness in advertising was illegal, the introduction of high-strength mixers, two-for-one and drink-all-you-can offers, the promotion of shooters, and the use of imagery culled from the rave scene in the branding of new alcopops represented a critical shift in the way drinks were marketed. Intoxication had always been part of the pleasure of drinking, but it was always the suppressed element in alcohol marketing: drink was never sold on the prospectus that it would get you drunk, even though that was always part of its appeal. As the drinks industry responded to the increased normalisation of drug use in youth cultures, and the 'development of new psychoactive consumption styles',[30] for the first time drunkenness itself started to be exploited by the drinks industry as the selling point for many of its products. Never before had the industry so explicitly sold drunkenness as the aim and point of drinking.

The desire of the alcohol industry to capture the psychoactive market was helped in no small way by the simultaneous suppression of rave culture by the Government. After the 1994 Criminal Justice Act specifically targeted the free, outdoor rave scene (by, notoriously, making special provision for the closure of events where the music was 'wholly or predominantly characterised by the emission of a succession of repetitive beats'), clubs and bars began competing to offer similar experiences.[31] The new breed of retail-centred bar chains were in an ideal position to blur the lines between pub and club: to invest in sound systems, lighting rigs, dance floors and DJs and thereby draw a generation of young people more attracted to repetitive beats than to real ale into their establishments.

Planning for the night

A further contributing factor to the rise of the new, youth-oriented, late-night bars in town and city centres was the desire among many planning authorities to use the promotion of a 'vibrant' urban nightlife as a means to achieve much-needed urban regeneration. Following the recessions of the 1980s and early 1990s, and the widespread development of out-of-town shopping malls, many town and city centres were increasingly run-down and economically unstable places: perceived as both depressing (by day) and dangerous (by night). At the same time, central government was encouraging increased housing development on 'brown field' (i.e. ex-industrial) sites in response to an impending housing shortage caused by increased demand for single-occupancy dwellings among both the unmarried and the divorced. The problem faced by local planning authorities was how to both re-stimulate local economies and encourage greater numbers of people and businesses to move into city-centre locations.

For many planners the solution to this conundrum lay in developing a more 'continental-style' city centre. Planners looked to cities such as Barcelona as the model for the successful regeneration of post-industrial urban environments. It was a model which suggested ex-industrial cities could be transformed by the development of new urbane cultures characterised by the promotion of arts, the culture industries and – most importantly – a 'vibrant' nightlife. Paris provided another, older, model for this – having been reinvented when Eugène Haussman pulled down the old streets following the uprisings of 1848 and replaced them with wide boulevards that housed grand cafés at every intersection. Parisian café society – in part the consequence of a monumental exercise in social engineering – also provided an ideal type to which the planners of late twentieth-century England aspired. The '24-hour city', modelled on continental café culture, was going to provide the royal road to a lasting

urban renaissance.

Of course, this played well with the new breed of alcohol retailers – even if they were more interested in selling Kahlua than cappuccino. At the heart of the '24-hour city' was the idea of 'mixed use' development. In principle this meant encouraging developers to produce buildings which included work, accommodation and leisure facilities in the same space. In reality, it often meant expensive single-occupancy flats built above an enormous bar. Drink retail chains were in the ideal position to market themselves as key to the development of a vibrant urban culture: they were not traditional pubs, they appealed to both men and women and they looked sophisticated. No one wanted to plonk a Red Lion in the middle of a city-centre redevelopment, but an All Bar One or a Bar Havana was an altogether different proposition.

Of course, local planning authorities had no power to promote such developments through the grant of alcohol licences; that remained in the gift of local magistrates. However, they were responsible for granting the Public Entertainment Licences (PELs) required by premises which provided public music and entertainment. Phil Hadfield has documented the marked increase in PELs handed out by local authorities to licensed premises in the late 1990s. These allowed for live and recorded music to be played, but also made it easier for licensees to then apply to magistrates for Special Hours Certificates (SHCs), which allowed premises providing public entertainment to extend their opening hours to 2a.m. Put briefly, the liberal granting of PELs by local authorities keen to develop their night-time economies, and the subsequent granting of SHCs by local magistrates who were encouraged to support this model of urban regeneration, led to a de facto lifting of standard licensing restrictions in city centres across the country. By 2003, 61 per cent of high-street bars were trading beyond normal hours and the idea of 11p.m. closing was already becoming an anachronism to many young urban drinkers.[32]

Not all local magistrates fell in line with this new vision, however. Many, suspicious that increased competition between outlets might lead to more, rather than less, drunkenness, continued to apply their increasingly fragile discretionary powers to reject licence applications. The magistrates in Nottingham were especially notorious for their stringent application of 'need', and it was a challenge to their authority that further weakened local controls on retail development. In 1996, a new bar – appropriately named Liberty's – was refused a licence by Nottingham magistrates after police objections. Liberty's owners appealed and hired a local law firm, Poppleston Allen, to argue their side in court. As Phil Hadfield has shown in precise detail, the adversarial nature of licensing appeals gave a significant advantage to private law firms who had the experience and resources

to manage the court environment effectively. Liberty's won their appeal in what was seen as a test of the right to apply 'need' to proposed city-centre developments.[33] Poppleston Allen would go on to become the solicitors of choice for affluent alcohol retail chains seeking to overturn licence refusals by local justices. As decisions were successfully challenged across the country, the last vestiges of 'need' were further demolished.

With hindsight it is tempting to dismiss the attempt to create a continental café society in English towns and cities as at best cackhanded and at worst deeply cynical. We should remember, however, that local planning authorities were faced with a very difficult problem to which the development of the night-time economy appeared to provide a tangible solution. Faced with the prospect of watching their cities go the way of Flint, Michigan or the way of Barcelona, it is hardly surprising that most planning authorities opted for the latter, especially when the architectural models never depicted the scene at a taxi-rank at 2a.m. The pubcos had the money and the will to invest in run-down city centres, and if an urban renaissance required the promotion of leisure industries whose prime market was alcohol then that was acceptable as long as individuals could be persuaded to drink sensibly. As Hobbs *et al.* put it, the consumption-based model of urban renaissance 'created a fog of city boosterism shrouding the heavy episodic alcoholic consumption that lay at the heart of the night-time economy'.[34] Nevertheless, it was a boosterism born out of a lack of viable alternatives, and many city centres were spared the worst effects of postindustrial recession by pushing the leisure economy.

In relation to the longer history of the drink question, this boosterism represents more than a novel anomaly. In fact, it marks a sea-change in the relationship between the alcohol economy and civic governance. For the first time, municipal authorities began to see their role as not simply managing the alcohol economy, but actively promoting it to the extent that it became critical to their long-term strategic visions. Alcohol consumption ceased to be simply an adjunct to regional economies, and became instead a key driver. When drinking was transformed from a regulated form of transgression to an activity on which whole urban economies depended, something very significant had taken place.[35]

The 1990s, then, saw seismic shifts in the alcohol market. The historic tie between brewers and retailers collapsed following the Beer Orders; the principle of 'need' collapsed under pressure from both central government and the magistrates' own advisory bodies; for the first time, the alcohol industry began to market drunkenness as a primary aim of drinking as they sought to compete with other psychoactive youth markets; and, again for the first time, local authorities began to see their role as promoting the alcohol market rather than simply managing it. While the basic principles

of licensing law remained as they had since the war, the landscape within which they worked had been transformed.

Time for reform

Despite the de facto extension of licensing hours in many city centres, in the mid-1990s the majority of premises still turned their customers out at 11p.m. While the problems now associated with the night-time economy may blur our memories of just how run-down many city centres had become in the late 1980s, the problems associated with 24-hour licensing make it easy to forget just how anachronistic many people found the old system of 11p.m. closing. In the late 1990s, the feeling among many drinkers (and not just New Labour spin doctors) was that 'Cool Britannia' simply wasn't the kind of place where fully grown adults should be told they had to drink up and trundle home a whole hour before midnight. This was all the more true as increasing numbers of people took holidays abroad and experienced the strange thrill of being able to finish a drink late at night without being harassed by tired and irritable landlords. To many people, fixed closing times smacked of an unsophisticated paternalism better suited to the England of Ted Heath than Tony Blair.

Extended opening was not a new idea, and it had been strongly supported by the Erroll Committee back in 1972. The Erroll Committee proposed that pubs open from 10a.m. to midnight as standard, precisely on the grounds that there was 'an expressed demand for … continental type cafes … and for modern amenities more generally'.[36] It was suggestions such as this (and the reduction of the legal drinking age to 17) which saw the report fall foul of public health campaigners who condemned it as a manifesto for the development of a nationwide drink problem.

What fell on stony ground in the early 1970s, however, landed in fertile soil in the 'noughties'. By 2000, the licensing system was a tangled mess of complex and contradictory rules. Anyone entering the ever more economically important leisure services had to negotiate whole thickets of overlapping legislation: public entertainment licences, special hours certificates, restaurant licences, 'two in a bar' rules, temporary event notices and a mass of other regulations which made the system daunting and unwieldy. Few denied that the system needed clearing out and when the Home Office presented a White Paper on the reform of the licensing laws in 2000 it contained many of the proposals that had previously appeared in the Erroll Committee report.

The White Paper, entitled *Time for Reform*, called for the various existing licences covering everything from alcohol retail to food provision to film performances and public entertainment to be scrapped and replaced

by just two licences: one for premises, and one for individuals. A premises licence would allow all the licensable activities previously covered by different legislation to be carried out on these premises (a single licence could, therefore, cover the sale of food, the provision of public entertainment, the showing of films and the sale of alcohol). The personal licence would allow the holder to sell alcohol in any premises that was licensed. In one clean stroke, then, the tangled complexity of existing licensing legislation would be swept away.

Time for Reform also accepted the recommendation contained in the BRTF report that licensing should be managed by local authorities acting according to national guidelines, not by magistrates acting according to their own discretion.[37] In other words, the principle of magisterial control which had been at the heart of licensing procedure since 1552 would be removed. Secondly, fixed closing hours would be lifted entirely. For the first time in almost two centuries, retailers would be free to sell alcohol at any time of day or night, seven days a week.

John Greenaway has suggested that the history of licensing provides ample evidence that the 'rational actor' theory of policy-making (the theory which assumes government policy is driven primarily by research and the rational analysis of evidence) is mistaken. Instead, Greenaway suggests that policy is more often driven by political expediency, which is then given the sheen of legitimacy through *post hoc* reference to a highly selective evidence base.[38] *Time for Reform* seems to bear this claim out. Its discussion of magisterial licensing extends no further than the BRTF report, its position on opening hours is based solely on the Portman Group study of lager louts and the proposals on young people and alcohol include one passing reference to another report carried out by the Portman Group in 1997. While the literature which informed the White Paper has sometimes been unfairly dismissed simply because it was funded by the drinks industry (the Portman Group study of lager louts was, in reality, a rigorous piece of social research), the lack of wider analysis which appeared to have gone into *Time for Reform* is startling, especially given the radical changes it proposed. No space was given to international studies looking at the effects of extended hours on consumption, and the history of licensing given in the appendix did not even mention the 1830 Beer Act, never mind the countless Select Committees and Royal Commissions which had thrashed out the questions of 'need', licensing procedure, access and policing over the centuries. *Time for Reform* was a document written as if history was a mere diversion.

Last orders

Nevertheless, *Time for Reform* underwent only minor modifications before providing the basis for a Licensing Bill that was introduced to Parliament in November 2002.[39] By this time responsibility for licensing had been moved from the Home Office to the Department for Culture, Media and Sport: signalling that it was now seen as an issue of leisure promotion, not the maintenance of law and order. From the start, New Labour focused on the extension of opening hours in their publicity for the Bill. Even though moving licensing to local authorities was the more historically radical proposal, the ending of fixed hours was the measure which most explicitly marked the Bill out as an attempt to modernise British social habits. Shortly before the 2001 Election, Labour sent a text message to thousands of young people which read 'cdnt give a xxxx 4 lst ordrs? thn vte Lbr on thrsday 4 xtra time'. That text has since become notorious as an illustration of the cavalier way in which Labour spin doctors attempted to bribe young voters with the promise of easier access to alcohol (one newspaper headline later ran 'Labour doesn't give a xxxx for the nation's livers').[40] However, the extension of opening hours was not simply presented as an issue of individual liberties; in its press releases, parliamentary statements and explanatory documents the Government also emphasised their claim that extended opening hours would 'reduce the problems of disorder and disturbance associated with fixed universal closing times'.[41] In terms of evaluating the success of the measures, this is a crucial point. The extension of opening was not presented as a rights issue which would have limited or negligible effects on crime and disorder, it was explicitly presented as a crime *reduction* measure which would have happy benefits for individual freedom. Both the research used in *Time for Reform* and the Erroll Committee had argued that the late-night violence was exacerbated by fixed closing times. Furthermore, it was an experiential truth to anyone who drank in pubs that people downed their drinks more quickly as closing time approached, and that the streets usually were more intimidating between 11p.m. and midnight than they were either before or after. While it turned a blind eye to research showing the negative effects of extended licensing in other countries (especially Ireland), the crime reduction element of 24-hour licensing was supported by research into English drinking patterns. Furthermore, it spoke to the common-sense perspective of drinkers and it was also supported by many within the police.[42]

The Bill initially had a good degree of public support, but its passage through Parliament was far from smooth. The Lords challenged the Government on a number of provisions, and they successfully removed a

clause allowing unaccompanied children to enter licensed premises. While all-day licensing was the subject of an attempted amendment, the coverage of 24-hour licensing was muted in the press and was by no means the subject of widespread condemnation.[43] Indeed, insofar as the press covered the debates on the Licensing Bill, the majority of column inches were devoted to a row that erupted between the Musicians Union and the Government over the requirement for all premises which held live music performances to apply for a licence. The Conservatives and Liberal Democrats both backed the Musician's Union in its attempt to derail what it saw as a 'draconian' piece of legislation, and it was on this issue that the Bill came closest to parliamentary failure as the Lords repeatedly insisted on an amendment allowing small, unlicensed venues to provide unamplified music.[44] In the end, a compromise was reached protecting morris dancers, but the requirement for all other live music to be licensed remained in place. Once compromise on this issue was reached the Bill passed its final reading and the Licensing Act became law. A timetable for implementation was prepared which meant that, while the legislation received Royal Assent in 2003, it would become fully operational in November 2005.

Notes

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2 Tuck, *Drinking and Disorder*, pp. 50, 66.
3 Marsh and Fox-Kibby, *Drinking and Public Disorder*, p. 156; Tuck, *Drinking and Disorder*, p. 68.
4 Department of Culture, Media and Sport (DCMS), 'Statistical bulletin: Liquor licensing' (2004) p. 8.
5 Monopolies and Mergers Commission, *The Supply of Beer* (London: HMSO, 1989), p. 2.
6 *Ibid*., p. 4.
7 *Ibid*., p. 2.
8 *Ibid*., p. 3.
9 *Ibid*., pp. 267–8.
10 *Ibid*., p. 295.
11 *Ibid*., p. 288.
12 J. Bridgeman, *The Supply of Beer* (London: Office of Fair Trading, 2000), p. 38.
13 Cornell, *Beer*, p. 228.
14 Bridgeman, *Supply of Beer*, p. 42.
15 *Ibid*., p. 3.
16 *Ibid*., p. 38.
17 House of Commons, *Report of the Departmental Committee on Liquor Licensing* (1972) Cmnd. 5154, p. 76.

18 *Ibid*., pp. 87, 90.
19 *Ibid*., p. 90.
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21 MMC, *The Supply of Beer*, p. 2.
22 Light and Heenan, *Controlling Supply*, p. 37.
23 *Ibid*., p. 42.
24 *Ibid*., p. 40.
25 BBC, *Panorama: Cdnt give a xxxx 4 lst ordrs?* (6 June 2004) transcript, http://news.bbc.co.uk/nol/shared/spl/hi/programmes/panorama/transcripts/xxxx.txt.
26 Light and Heenan, *Controlling Supply*, pp. 43–4.
27 DCMS, 'Statistical bulletin: liquor licensing', p. 10.
28 See for example, K. Brain, 'Youth, alcohol and the emergence of the post-modern alcohol order' (London: Institute of Alcohol Studies, 2000); P. Chatterton, 'Governing nightlife: Profit, fun and (dis)order in the contemporary city', *Entertainment Law*, 1:2 (2002), pp. 23–49; P. Chatterton and R. Hollands, *Urban Nightscapes* (London: Routledge, 2003); D. Hobbs, P. Hadfield, S. Lister and S. Winlow, *Bouncers: Violence and Governance in the Night-time Economy* (Oxford: Oxford University Press, 2003); P. Hadfield, *Bar Wars: Contesting the Night in Contemporary British Cities* (Oxford: Oxford University Press, 2006); S. Winlow and S. Hall, *Violent Night: Urban Leisure and Contemporary Culture* (Oxford: Berg, 2006); M. Plant and M. Plant, *Binge Britain: Alcohol and the National Response* (Oxford: Oxford University Press, 2006).
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30 Measham and Brain, 'Binge drinking', p. 266.
31 Hadfield, *Bar Wars*, p. 59.
32 *Ibid*., p. 52.
33 BBC, 'Cdnt give a xxxx'.
34 D. Hobbs, S. Winlow, P. Hadfield and S. Lister, 'Violent hypocrisy: Governance and the night-time economy', *European Journal of Communications*, 2:2 (2005), 161–83, p. 163.
35 A. Lovatt, 'The ecstasy of urban regeneration: Regulation of the night-time economy in the transition of the post-Fordist city', in J. O'Connor and D. Wynne, *From the Margins to the Centre: Cultural Production and Consumption in the Post-industrial City* (Aldershot: Arena, 1996), pp. 141–68.
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40 J. McCartney, 'Labour doesn't give a xxxx for the nation's livers' (*Sunday Telegraph*, 30 January 2005).
41 Department of Culture, Media and Sport, 'Licensing Countdown' (2004), p. 12 www.culture.gov.uk/NR/rdonlyres/3FEABCCF-D8F4–48D8-B8B5–35800D9EF91A/0/LCNewsletterDec.pdf.
42 Winlow and Hall, *Violent Night*, p. 167.

43 Methodological note: a survey was carried out by the author using the newspaper database NewsBank, which contains full copies of all national newspaper articles published since 2000. Searches were carried out for all national newspaper reports containing the phrases 'licensing bill' and 'licensing act' for all years 2003–07 and the resulting articles analysed.

A further search was carried out into coverage of binge drinking. For this the search terms 'binge drinker' and 'binge drinking' were used. Further qualifiers were added to remove articles which dealt specifically with Scotland or Ireland (in Ireland binge drinking became the subject of heated media debate about two years before the same thing happened in England). The results provide only an imperfect snapshot of the rise of 'binge drinking' in the mass media; however, they so give a rough sense of the trajectory of the subject. The findings, in purely numerical terms, were as follows:

Table 1 Binge drinking in the British press

Year	*No. of reports containing the phrases 'binge drinkers' or 'binge drinking'*
2000	0
2001	4
2002	6
2003	24
2004	101
2005	136
2006	141
2007	73

44 M. Woolf, 'Musicians petition Blair over new "draconian" Licensing Bill' (*Independent*, 17 June 2003).