# Luck of the Irish: Will the Casinos Transform from Gaelic Grey TO GAELIC GREEN \$\$

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#### HISTORY OF IRISH GAMBLING LAWS

As the first decade of the twenty-first century evolved, Ireland was one of only two countries in the European Union that did not have legal, regulated casinos.<sup>1</sup> The Irish Gaming and Lotteries Act of 1956 states:

- (1) No person shall promote or assist in promoting or provide facilities for any kind of gaming-
  - (a) in which by reason of the nature of the game, the chances of all the players, including the banker, are not equal, or
  - (b) in which any portion of the stakes is retained by the promoter or is retained
  - by the banker otherwise than as winnings on the result of play, or
  - (c) by means of any slot machine not prohibited by section 10.
- (2) Such gaming is in this Act referred to as unlawful gaming.<sup>2</sup>

While this wording seems to prohibit casinos, the law is not totally clear. There are a few loopholes in the law. The Act does not prohibit games with equal chances. Moreover, games can be conducted lawfully, according to § 4(3), if promoters assess minor seat charges to players, and "the promoter derives no personal profit from the promotion of the game." Additionally, Part III of the 1956 law indicates that amusement centers can have slot machines that award small prizes.<sup>4</sup> The Act also includes provisions for private lotteries, and the Act defines bingo games to fall under these provisions.<sup>5</sup>

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<sup>&</sup>lt;sup>1</sup> See Casino City Press, Casino City's Global Gaming Almanac (2006). The other country is the independent (southern) Cyprus. The Turkish Republic of Northern Cyprus does have land-based casinos. North Cyprus Casinos, http://www.aboutnorthcyprus.com/ index.php/feature/c/C13/ (last visited Apr. 8, 2010).

<sup>&</sup>lt;sup>2</sup> Gaming and Lotteries Act, 1956 § 4 (Act. No. 2/1956) (Ir.) available at http://www.irish statutebook.ie/1956/en/act/pub/0002/index.html (last visited Mar. 10, 2010) (amended in 1979, Act 6, to set prize limits).

 $<sup>^{3}</sup>$  Id. at § 4(3).

<sup>&</sup>lt;sup>4</sup> Id. at § 14.

<sup>&</sup>lt;sup>5</sup> Id. at § 4; Government of Ireland, Dep't of Justice, Equal. & Law Reform, Inter-DEPARTMENTAL REVIEW GROUP, REVIEW OF THE GAMING AND LOTTERIES ACTS 1956-1986 at 19 (2000), available at http://www.inis.gov.ie/en/JELR/GamingLotteriesActs.pdf/Files/ GamingLotteriesActs.pdf (last visited Mar. 10, 2010) [hereinafter Review of Gaming and Lotteries Acts 1956-1986].

#### UNLV GAMING LAW JOURNAL

unknown

[Vol. 1:121

For decades, only a few card clubs-mostly poker clubs-closely followed the spirit of the law by operating on its margins.<sup>6</sup> Some amusement centers offered slot prizes with larger-than-permitted prizes.<sup>7</sup> However, the law on prize limits was not altered to fully account for changes in Irish currency from pounds to a decimal system to Euros.8

#### II. HISTORY OF IRISH CASINO VENTURES

#### Phoenix Park Racecourse

The first full-scale attack on the Irish Gaming and Lotteries Act of 1956 came in the 1990s with an effort to establish a large casino as the centerpiece for a tourism-convention complex in west Dublin's Phoenix Park.9 A partnership, consisting of two companies, Sonas Center of Manchester, England, and Ogden Group of the United States, desired the casino. Together, the companies purchased more than 100 acres at the Phoenix Park Racecourse in 1993.<sup>10</sup> Earlier, the racecourse had closed operations as it was losing money. 11 The Sonas-Ogden consortium proposed rezoning the property to allow for a £375 million investment in a 65,000-seat stadium, a 12,000-seat indoor arena, and a 2,500person national convention center.<sup>12</sup> Additionally, the consortium planned to construct a 450-room, 26-story Sheraton hotel with a 4,800-square-foot casino.13

Norman Turner, who headed Sonas Center, engaged in negotiations with John Hynes, director of the An Post National Lottery Company. 14 Sonas-Ogden planned to operate and own the Phoenix Park Racecourse casino, perhaps in partnership with An Post. 15 The gaming was essential to the success of the project, as casino profits would enable smooth financial operations of all the facilities. <sup>16</sup> In addition to obtaining rezoning changes from local authorities in west Dublin, the sponsors would have to gain approval by the national Dáil<sup>17</sup> to change the 1956 law to permit casino gambling.<sup>18</sup>

The negotiations between Sonas and An Post led to corruption allegations against the Minister of Finance, Bertie Ahern, who oversaw the An Post

<sup>13</sup> *Id*.

<sup>&</sup>lt;sup>6</sup> Interview with Joseph Kelly, Partner, A&L Goodbody, Attys, in Dublin, Ir. (Oct. 4, 2007) [hereinafter Kelly Interview]. Operators claimed that games were "among friends." Id. 7 Id.; Interviews with J.J. Woods, Director of Operations, Atlantic Casino Consultants, in

Dublin, Ir. (Oct. 6 & 20, 2007) [hereinafter Woods Interviews].

<sup>&</sup>lt;sup>9</sup> Tom McEnaney, New Casino Takes a Gamble on Irish Law, The Sunday Times (England), Oct. 26, 2003; Chris Ryan, Sunday Indepen. Life (Ir.), Mar. 6, 2005, at 23. Frank Connolly, Bertie and the Manchester Businessman, VILLAGE (Ir.), Sept. 27, 2006; Katie Hannon, Richardson Denies Claim He Offered Money to Lawlor, IRISH EXAMINER, June 10, 2000, available at http://archives.tcm.ie/irishexaminer/2000/06/10/current/ipage 14.htm (last visited Mar. 5, 2010).

<sup>&</sup>lt;sup>11</sup> Connolly, *supra* note 10.

<sup>&</sup>lt;sup>12</sup> *Id*.

<sup>&</sup>lt;sup>14</sup> *Id*.

<sup>&</sup>lt;sup>15</sup> *Id*.

<sup>&</sup>lt;sup>16</sup> *Id*.

<sup>&</sup>lt;sup>17</sup> The Dáil Éireann, the representative body of the Oireachtais, the National Parliament.

<sup>&</sup>lt;sup>18</sup> Connolly, *supra* note 10.

National Lottery Company and its director, Hynes.<sup>19</sup> In 1994, critics accused Ahern of knowing that Hynes engaged in discussions about the casino and that Ahern benefitted inappropriately from Sonas-Ogden's ambition.<sup>20</sup> A corruption tribunal at the Dáil investigated the allegations,<sup>21</sup> to which Ahern denied any wrongdoing.<sup>22</sup> Whether Ahern knew that An Post was involved in the Phoenix Park Racecourse casino project is important because Norman Turner had invited Ahern to Manchester in 1994 to sit with him in his corporate viewing box at a Manchester Union football game.<sup>23</sup> It is alleged that while in Manchester, Ahern met with others who contributed £8,000 to his political party, Fianna Fáil.<sup>24</sup> Moreover, a close friend of Ahern's, who also served as a Fianna Fáil party strategist, was hired to be a public relations consultant for Sonas-Ogden.<sup>25</sup> Additionally, Liam Lawlor, a member of the Dáil, who represented the west Dublin area, later claimed that he had been offered a £100,000 consulting contract by Sonas-Ogden to work with the project.<sup>26</sup> He indicated that he had declined as he opposed the casino.<sup>27</sup>

unknown

Before the corruption allegations surfaced, the local authority refused the casino project zoning in 1995.<sup>28</sup> However, on May 2, 1996, the local authority reversed its previous decision and the project won rezoning.<sup>29</sup> Subsequently, a very active opposition to the casino arose guided by key members of the Dáil who wanted to see horse racing revived at Phoenix Park.<sup>30</sup> Opponents gathered 20,000 signatures from local residents of the area in opposition to the project.<sup>31</sup> They claimed the proposal would bring lower air quality, noise pollution, and traffic congestion. A leading member of the Dáil, Joan Burton, condemned the project, implying that it would be a magnet for organized crime, drug use, and prostitution.<sup>32</sup>

<sup>&</sup>lt;sup>19</sup> Id.; Hannon, supra note 10. Ahern served later as Prime Minister, or Taoiseach, from June 1997 until he resigned in May 2008. Id.

<sup>&</sup>lt;sup>20</sup> Connolly, *supra* note 10.

<sup>&</sup>lt;sup>21</sup> The Dáil held the tribunal through its Tribunal of Inquiry Into Certain Planning Matters & Payments, also known as the Mahon Tribunal. Henry McDonald, *Ahern Comes Out Fighting at Anti-corruption Tribunal*, The Guardian, Sept. 14, 2007, at 26, *available at* http://www.guardian.co.uk/world/2007/sep/14/ireland (last visited Mar. 5, 2010); *see also Ahern's Lawyers Back in Court Over Mahon Probe*, BreakingNews.ie, Feb. 14, 2008, *available at* http://breakingnews.ie/Ireland/mheyidqlgbsn/ (last visited Mar. 5, 2010).

<sup>&</sup>lt;sup>22</sup> See sources cited supra note 21.

<sup>&</sup>lt;sup>23</sup> Connolly, *supra* note 10.

<sup>&</sup>lt;sup>24</sup> Hannon, *supra* note 10; Connolly, *supra* note 10.

<sup>&</sup>lt;sup>25</sup> Connolly, *supra* note 10.

<sup>&</sup>lt;sup>26</sup> Hannon, *supra* note 10.

<sup>&</sup>lt;sup>27</sup> Id

<sup>&</sup>lt;sup>28</sup> See John Mulligan, All Bets May Be Off On Gambling Laws, The Independent (Ir.), Nov. 29, 2007, available at http://www.independent.ie/business/irish/all-bets-may-be-off-on-gambling-laws-1232541.html (last visited Mar. 5, 2010).

<sup>&</sup>lt;sup>29</sup> Tom McEnaney, *Huge Gamble on City Casino Failed to Pay Off for Turner*, The Independent (Ir.), Sept. 30, 2006, *available at* http://www.independent.ie/national-news/hugegamble-on-city-casino-failed-to-pay-off-for-turner-80927.html (last visited Mar. 5, 2010).

<sup>&</sup>lt;sup>30</sup> See Mulligan, supra note 28.

 $<sup>^{31}</sup>$  See id.

<sup>&</sup>lt;sup>32</sup> See Woods Interviews, supra note 7; Senan Molony, Ahern 'approved secret casino deal,' The Independent (Ir.), Dec. 1, 2007, available at http://www.independent.ie/national-news/ahern-approved-secret-casino-deal-1234277.html (last visited Mar. 5, 2010).

#### UNLV GAMING LAW JOURNAL

unknown

[Vol. 1:121

A few weeks after the project won rezoning, the Prime Minister's cabinet met and refused to discuss the proposal or consider legislation that would permit casino gambling.<sup>33</sup> In the course of Ahern's 1997 campaign, as leader of Fianna Fáil and candidate for Taoiseach, he completely rejected casinos. His campaign literature read: "We will not have the conference centre connected with the casino, good, bad, or indifferent. There will be no casino as proposed for the Phoenix Park racecourse site."<sup>34</sup> The fate of the proposed project was finally sealed as Turner and the Sonas-Ogden group sold the property for £38 million, representing a 350% profit for the investors.<sup>35</sup> The new owners won approval to construct 1,000 housing units on the property.<sup>36</sup>

## High-Scale Casinos

In 2000, the Department of Justice, Equality and Law Reform issued a study report from its Interdepartmental Group entitled, "Review of the Gaming and Lotteries Acts of 1956-1986."37 The report urged that casinos remain illegal: "[t]he ban on casino-type gaming included in the 1956 Act, should be retained in the new legislation to confirm current policy in this area."38

However, while the report was definitive, promoters opened several card clubs and amusement machine centers that operated on the "grey" edge of the law. Beginning in 2003, a number of "high scale" facilities opened. Activity came from serious entrepreneurs who sought to exploit the 1956 law's "loopholes" by opening "real" casinos, or that is, "casino clubs" with high limits, but still purporting to operate within the restrictions in the 2000 study.

In October 2003, international casino manager J.J. Woods launched "Ireland's first full fledged casino" in the heart of Dublin. 39 Woods's facility is called Silks Club. 40 The Silks Club is themed around horseracing and the colors of famous racing stables of Ireland.<sup>41</sup> It is located on Earls Fort Terrace amongst foreign embassies and other Georgian mansions, just across from the very upmarket Conrad Hotel.<sup>42</sup> Silks has an upmarket motif; it caters to "highranking figures from the world of business, media, the horseracing fraternity," and other celebrities. 43 Celebrities, models, and a former Miss World attended the special opening.<sup>44</sup> The casino offers blackjack, baccarat, roulette, three-card poker, and stud poker. 45 It offers food service with complimentary

<sup>&</sup>lt;sup>33</sup> Connolly, *supra* note 10.

<sup>&</sup>lt;sup>34</sup> *Id*.

<sup>&</sup>lt;sup>35</sup> *Id*.

<sup>&</sup>lt;sup>36</sup> *Id*.

 $<sup>^{\</sup>rm 37}$  Review of Gaming and Lotteries Acts 1956-1986,  $\it supra$  note 5, at 5.

<sup>&</sup>lt;sup>39</sup> McEnaney, supra note 9; Woods Interviews, supra note 7; Ryan, supra note 9.

<sup>40</sup> Woods Interviews, supra note 7.

<sup>&</sup>lt;sup>41</sup> *Id*.

<sup>&</sup>lt;sup>42</sup> *Id*.

<sup>43</sup> Ryan, supra note 9.

<sup>&</sup>lt;sup>45</sup> See Silks Casino Club, http://www.silksclub.ie (last visited Mar. 5, 2010).

Spring 2010]

125

beverages as well as large plasma screens for sporting events.<sup>46</sup> A shuttle service takes players to major hotels throughout Dublin.<sup>47</sup>

unknown

A few blocks away from the Silks Club is the Fitzwilliam Card Club.<sup>48</sup> In 2003, eighteen Dublin businessmen sought to establish a "suitable" place where interested businessmen could play poker.<sup>49</sup> The club has no machines, but instead offers tables for several types of poker—Texas Hold 'em, Omaha, and Three Card Poker, as well as mahjong, kalooki, blackjack, punto banco, and roulette.<sup>50</sup> At full capacity, there are twenty-one tables operating on two floors.<sup>51</sup> Each night there is a poker tourney. The casino employs 110 people and is open twenty-four hours a day.<sup>52</sup>

The marketing director of the Fitzwilliam Card Club, David Hickson, indicated that the club abides strictly by the 1956 gaming law by enforcing stringent membership rules that require picture identifications and background checks. Members must be twenty-one years old. A subsidiary company, called Golden Horseshoe, owned by the same eighteen men, operates the games. At the non-poker games, one member among the players volunteers to be the "bank," assuring that even odds are given. The casino enforces business rules pertaining to money laundering. For instance, large cash transactions are reported to government authorities. It also follows a code of conduct designed by the Gaming & Leisure Association of Ireland ("GLAI"). The casino does not give credit, but it does allow use of debit cards and credit cards for up to €5000 per day. The casino has a dining area, and a separate place away from the playing floor allows alcoholic beverages. Members are given free meals and beverages.

According to both governmental and private sources close to the casino scene, in 2003, when asked about the legality of these clubs, the Minister of Justice, Michael McDowell, suggested that these and other casino clubs in

<sup>&</sup>lt;sup>46</sup> *Id*.

<sup>&</sup>lt;sup>47</sup> *Id*.

<sup>&</sup>lt;sup>48</sup> Interview with David Hickson, Marketing Director, The Fitzwilliam Casino and Club, in Dublin, Ir. (Oct. 4, 2007) [hereinafter Hickson Interview]. This facility is at Clifton Hall, a structure that used to be a church and a convent. *Id.* Managing Director David Hickson hinted that statesman, Éamon de Valera, just might be rolling in his grave, as the very strict (and anti-gambling) Catholic moralist politician used to come to the building to say morning prayers before going to the Dáil to lead parliamentary debates. *Id.* 

<sup>&</sup>lt;sup>49</sup> *Id*.

<sup>&</sup>lt;sup>50</sup> *Id.*; *see also* Fitzwilliam Card Club, http://www.fitzwilliamcardclub.com/ (last visited Apr. 10, 2010).

<sup>&</sup>lt;sup>51</sup> Fitzwilliam Card Club, *supra* note 50.

<sup>&</sup>lt;sup>52</sup> Hickson Interview, *supra* note 48.

<sup>&</sup>lt;sup>53</sup> *Id*.

<sup>&</sup>lt;sup>54</sup> *Id*.

<sup>&</sup>lt;sup>55</sup> *Id*.

<sup>&</sup>lt;sup>56</sup> *Id*.

<sup>&</sup>lt;sup>57</sup> *Id*.

<sup>&</sup>lt;sup>58</sup> *Id*.

<sup>&</sup>lt;sup>59</sup> *Id*.

<sup>&</sup>lt;sup>60</sup> *Id*.

<sup>&</sup>lt;sup>61</sup> *Id*.

<sup>&</sup>lt;sup>62</sup> *Id*.

#### UNLV GAMING LAW JOURNAL

unknown

[Vol. 1:121

Dublin were indeed illegal.<sup>63</sup> However, McDowell said that because of the vagueness of the 1956 law, it would be difficult to win criminal (beyond a reasonable doubt) convictions.<sup>64</sup> He indicated he would not seek any prosecutions unless the law changed.<sup>65</sup> His position was an invitation for a proliferation in the numbers of clubs.<sup>66</sup> The expansion of the number of clubs coincided with the booming popularity of poker gaming.

### C. The Sporting Emporium

Soon after the rise of casino clubs, another "grey" casino sought an even more substantial role in the Irish gaming scene: the Sporting Emporium near Grafton Street (a major pedestrian market street near Trinity College and Stephens Green) on Anne's Lane.<sup>67</sup> Located in a three-story, 12,000-square-foot building, it has a "golf" theme with displays of "18th Hole" green flags signed by winners of golf tournaments such as the Masters and the British Open.<sup>68</sup> The Sporting Emporium represents a €5.5 million (\$8.1 million) investment<sup>69</sup> by Dermot Desmond, the sixth-richest man in Ireland.<sup>70</sup> In the past, he has been a partial owner of the Manchester Union football team and the London City Airport.<sup>71</sup> In October 2005, the Sporting Emporium opened with a flash of publicity. When the facility opened, invited guests included movie personalities as well as the ubiquitous "Miss World."<sup>72</sup>

The casino combines two gaming operations. On the ground floor, there is an upgraded sports betting shop.<sup>73</sup> The shop is run as a separate business by Chronicle Sports.<sup>74</sup> A person may make a bet in the sports parlor downstairs without becoming a member of the upstairs casino club.<sup>75</sup> It is spacious and

<sup>&</sup>lt;sup>63</sup> Kelly Interview, *supra* note 6; Woods Interviews, *supra* note 7; Interview with Grainne Bolger, Assistant Principal Officer, Project Development Division, Department of Justice, Equality and Law Reform, in Dublin, Ir. (Oct. 5, 2007) [hereinafter Bolger Interview].

<sup>&</sup>lt;sup>64</sup> See sources cited supra note 63.

<sup>65</sup> See sources cited supra note 63.

<sup>66</sup> See sources cited supra note 63.

<sup>&</sup>lt;sup>67</sup> See The Sporting Emporium, http://www.sportingemporium.com (last visited Mar. 5, 2010); see also The Sporting Emporium, Dublin Events, http://www.dublinevents.com/dublin-casinos/the-sporting-emporium.php (last visited Mar. 5, 2010).

<sup>&</sup>lt;sup>68</sup> Woods Interviews, *supra* note 7.

<sup>&</sup>lt;sup>69</sup> Mulligan, supra note 28; see also Woods Interviews, supra note 7.

<sup>&</sup>lt;sup>70</sup> Ireland's Rich List 1-10, THE INDEPENDENT (Ir.), Mar. 31, 2010, available at http://www.independent.ie/business/rich-list/irelands-rich-list-110-2116314.html (last visited Apr. 19, 2010); see also Woods Interviews, supra note 7.

<sup>&</sup>lt;sup>71</sup> Dermot Desmond, The Sunday Times (England), Apr. 27, 2008, available at http://business.timesonline.co.uk/tol/business/specials/rich\_list/article3800639.ece (last visited Apr. 19, 2010); see also Woods Interviews, supra note 7. Desmond may be positioned to quickly expand the casino and reach out to wider markets just as soon as Ireland legalizes casinos. It is doubtful that he would wish to maintain the unclear and "grey" status of his gaming establishment for a longer period of time. He is "well-plugged in" to high government circles

<sup>&</sup>lt;sup>72</sup> Visit to facility by the author on Oct. 5, 2007; Woods Interviews, *supra* note 7.

<sup>&</sup>lt;sup>73</sup> Woods Interviews, *supra* note 7. Most of the betting shops of Ireland are clean but rather downmarket. *Id.* 

<sup>&</sup>lt;sup>74</sup> *Id*.

<sup>&</sup>lt;sup>75</sup> *Id*.

#### LUCK OF THE IRISH

unknown

127

has a lounge with food service.<sup>76</sup> It has many television monitors and is open to walk-in business from 10 a.m. until 6 p.m.<sup>77</sup> The café upstairs serves liquor, but not in gaming areas.<sup>78</sup>

The casino on the upper floors is open from 6 p.m. until 6 a.m.<sup>79</sup> The two upper floors feature thirty tables—six for roulette, eight for blackjack, one each for punto banco and pai gow, and fourteen for poker.<sup>80</sup> The tables have limits, but these may be adjusted for players.<sup>81</sup> There are more than 100 employees.<sup>82</sup>

Poker tournaments are ongoing with twelve each evening.<sup>83</sup> There are no slot machines, as slots appeal to a market that the Sporting Emporium does not seek.<sup>84</sup> Players must join the club.<sup>85</sup> By October 2007, 33,702 had done so.<sup>86</sup> The club draws approximately 150 players on weeknights and 400 each night on weekends.<sup>87</sup> Players must be twenty-one-years old and meet a modest dress code—no hooded sweatshirts and no flip-flop sandals.<sup>88</sup> The players must register their identity and submit to a biometric fingerprint scan each time they enter a casino area.<sup>89</sup> Security cameras are linked directly into the local police department.<sup>90</sup>

The Sporting Emporium has also sought to be a valuable member of the community, as it shares its profits with charities, including a charity fund for injured horse jockeys, 91 many of whom are members of the club. 92

The Sporting Emporium advertises in major media; however, its operators just might be more content to be on a side street outside of the general public view until Irish casino laws change. According to J.J. Woods, an Ireland-based casino consultant, the casino's operators may regret the consequences of their first "flash" of publicity. The incumbent Justice Minister, Michael McDowell, seemed to have taken notice and did not like what he saw. St.

#### D. Subsequent Government Reaction to Casinos

In March 2006, McDowell, who had refused to enforce the casino law in 2003, announced that he was going to raid casino clubs and close them down. He claimed that "[a]ll commercial clubs where unlawful gaming takes place are

<sup>&</sup>lt;sup>76</sup> *Id*.

<sup>&</sup>lt;sup>77</sup> *Id*.

<sup>&</sup>lt;sup>78</sup> *Id*.

<sup>&</sup>lt;sup>79</sup> *Id*.

<sup>&</sup>lt;sup>80</sup> *Id*.

<sup>81</sup> *Id*.82 *Id*.

<sup>83</sup> *Id*.

<sup>84</sup> *Id*.

<sup>85</sup> *Id*.

<sup>86</sup> *Id.* 

<sup>&</sup>lt;sup>87</sup> *Id*.

<sup>&</sup>lt;sup>88</sup> *Id*.

<sup>&</sup>lt;sup>89</sup> *Id*.

<sup>&</sup>lt;sup>90</sup> *Id*.

<sup>&</sup>lt;sup>91</sup> *Id*.

<sup>&</sup>lt;sup>92</sup> *Id*.

<sup>93</sup> *Id*.94 *Id*.

<sup>95</sup> *Id.* 

[Vol. 1:121

illegal in Ireland. . . . A number of places are now posing as casinos, under the rubric of private members' clubs, and it's my intention to make sure the law is full enforced against all of them." <sup>96</sup>

Licensing barrister,<sup>97</sup> Constance Cassidy, Senior Counsel, agreed. She understood that the clubs sought profits rather than the members' mutual benefit. She offered that:

[t]he control of the club is not vested in the members, as I understand it, nor are the committee elected on an annual basis, therefore they are not private members' clubs under the Intoxicating Liquor Act. . . . If gaming as defined by the 1956 act took place on such premises, prosecutions can take place and the gardaí[<sup>98</sup>] are entitled to prosecute. <sup>99</sup>

McDowell offered some clarification on his position when a member of the Dáil asked McDowell to answer questions regarding the legality of The Sporting Emporium and other existing casinos. On May 10, 2006, McDowell answered the questions from his colleagues:

[It is the Dáil's responsibility] to decide whether it wants to regulate or prohibit casino gambling in Ireland. . . . [Today's] policy, as clearly expressed in those Acts [including the Irish Gaming and Lotteries Act of 1956], goes for the prohibition of casino-type operations in this State and against the notion that casinos should be permitted and regulated.

I agree with that policy. Casinos, generally speaking, are not desirable. It is the general view of the great majority of people in this society that they are not desirable. . . .

Unlawful gaming is gaming where the chances of the players are not equal. However, the running of a business enterprise offering games of chance where the promoter has an edge over the other participants in the game, as is the case with roulette, is defined by the Act as unlawful gaming. That applies to taking a share of the pot simply for running the game without putting any stake at hazard—which is how casinos operate poker tables—and it is against the policy and terms of the Act for that to be permitted. I am not a puritan or a killjoy. I do not mind people playing poker if they want to, but if people are engaging in unlawful gaming, they should not be allowed [to] operate a business under terms of the 1956 Act.

There are those who would argue that we should recognize that casinos are here to stay and instead of continuing to outlaw them we should permit them to operate and set up systems for regulating their operation or perhaps extracting revenue from them. That is a course taken in many jurisdictions but I do not share that view. We do not need this. . . . Innocent people are sucked into such activity and it is not desirable that they should be. . . .

The question at issue is, do we want private enterprise casinos in Ireland, a State-run casino, or to leave matters roughly as they are. . . . We should ensure bogus clubs, which pretend to be clubs but clearly are not, do not become a loophole in the law and effectively allow for casinos to be established across this country posing as

Ormac O'Keeffe, McDowell to Shut Casinos, IRISH EXAMINER, Mar. 7, 2006, available at http://archives.tcm.ie/irishexaminer/2006/03/07/story187209586.asp (last visited Mar. 5, 2010).

<sup>97</sup> A "licensing barrister" is an Irish attorney who specializes in matters involving licenses for liquor establishments.

<sup>&</sup>lt;sup>98</sup> The Garda Síochána is the Irish police force.

<sup>99</sup> O'Keeffe, supra note 96.

#### **Spring 2010**] LUCK OF THE IRISH

something else. . . . I intend to make the law workable and to allow the [police] to close unlawful gaming establishments that are not licensed in accordance with the policy laid down . . . . 100

Knowledgeable casino sources suggest that McDowell's announcement raised a political firestorm of protest as there were then over forty clubs around Ireland. 101 These clubs had political muscle. Desmond Dermot, for instance, was a major player on the political scene. Within a week of his statement, McDowell seemed to have backed down and deferred judgment to a new government casino committee that was authorized to make a study and issue a report about what should be done with casinos. 102 McDowell was defeated in his 2007 reelection bid for a seat in the Dáil, and a new Justice Minister, Brian Lenihan, took over developments on the casino front; however, a cabinet shuffle found Lenihan in another ministry and Dermot Ahern (not related to Bertie Ahern) became the new Justice Minister in May 2008. 103

### Casino Industry Organization and Government Response

McDowell's activity represented a serious threat that the casino owners would not overlook. Casino owners felt that a gauntlet had been placed in the sand. The existing casino owners responded, as many of them formed the Gaming and Leisure Association of Ireland. 104 The GLAI exerted pressure upon the government to repudiate the stand taken by McDowell.

The first item on the GLAI's agenda was to offer the government a proposal on how to legalize and regulate the casinos. 105 The GLAI advocated that casino owners emphasize the social aspects of their properties by only allowing three machines per every one table game. 106 The GLAI did not endorse highstakes slot clubs in amusement centers. 107 It did not want the government to become financially dependent upon casino tax revenues, so it proposed that the casino tax (in addition to normal business taxes) be only one percent of betting revenues, the same tax rate paid at the betting shops. 108 Additionally, the GLAI recommended that the Value Added Tax not be applied to casino services. 109 There has been controversy over whether it does or not. 110

<sup>&</sup>lt;sup>100</sup> 619 Dáil Deb. cols. 510-12 (May 10, 2006), available at http://historical-debates. oireachtas.ie/D/0619/D.0619.200605100018.html (last visited Mar. 5, 2010).

Hickson Interview, supra note 48; Woods Interviews, supra note 7.

<sup>&</sup>lt;sup>102</sup> Bolger Interview, supra note 63; Kelly Interview, supra note 6; Woods Interviews,

<sup>&</sup>lt;sup>103</sup> See sources cited supra note 102. In May 2008, Finance Minister Brian Cowen was elected as Ireland's Prime Minister, following the resignation of his successor, Bertie Ahern. Ireland elects Cowen as Prime Minister, Associated Press, May 7, 2008, http://www.msnbc. msn.com/id/24507366/ (last visited Apr. 19, 2010). Brian Lenihan became Finance Minister and Dermot Ahern was appointed to Justice Minister. Id.

<sup>&</sup>lt;sup>104</sup> Hickson Interview, *supra* note 48.

 $<sup>^{105}</sup>$  Gaming and Leisure Ass'n of Ireland, Position Paper on the Regulation of Casinos in Ireland \*1 (Jan. 2008), available at http://www.glai.ie/GLAI%20position%20 paper.pdf [hereinafter GLAI Report].

106 See id. at \*4, \*5; Hickson Interview, supra note 48.

GLAI Report, supra note 105, at \*4, \*5; Hickson Interview, supra note 48.

<sup>&</sup>lt;sup>108</sup> *Id.* at \*6.

<sup>&</sup>lt;sup>110</sup> Hickson Interview, supra note 48.

[Vol. 1:121

The GLAI proposal recommended that betting limits and hours of play be left up to each casino and that all personnel involved in gaming be licensed by the government following receipt of a certificate of personal fitness from the Garda Síochána. Providers of gaming equipment would also be regulated. The GLAI wished to have no separate commission for regulation, but rather to use existing ministries to govern gaming. The GLAI suggested a gaming age of at least eighteen years. 114

The GLAI also recommended provisions governing internet gaming so that Irish players would not be required to patronize untaxed and unregulated offshore providers. However, J.J. Woods, one of the GLAI's supporters, disagrees. He believes that legalization of casinos is necessary to meet competition from internet gaming:

I think internet gambling is dangerous because if you've got isolated gambling, it's secretive gambling, and people can do it in their back office, or even at work, it's just too easy. I think that's wrong  $\dots$  If people want to gamble, they should leave the family home and go out among other people  $\dots$  to a casino.  $^{116}$ 

According to the GLAI plan, the number of casino licenses granted would not be limited, but the licensing authority would consider market demand and environmental circumstances in order to both attract tourist gamblers and to avoid residential areas. The casinos would be limited in size to 15,000 square feet, with less than half that space allocated for gaming. The casinos would be free standing, unattached to hotels, and without amenities. Casino licenses would be granted for a one-year probationary period, and after that, they would be effective for the life of the entity. European Union money laundering rules would be followed.

The GLAI also incorporated its Code of Practice into the proposed legislation. The Code calls for financial transparency, video surveillance, and recording of all names and accounts of players. The casinos would not give credit, and players would only be able to use a single credit card for funds to

<sup>111</sup> GLAI Report, supra note 105, at \*3, \*4.

<sup>112</sup> See id. at \*5; Hickson Interview, supra note 48.

<sup>113</sup> GLAI Report, supra note 105, at \*2.

<sup>&</sup>lt;sup>114</sup> *Id.* at \*5.

<sup>&</sup>lt;sup>115</sup> *Id.*; *see also* Bolger Interview, *supra* note 63; Kelly Interview, *supra* note 6; Woods Interviews, *supra* note 7.

Woods Interviews, supra note 7; Ryan, supra note 9; McEnaney, supra note 9.

<sup>117</sup> GLAI report, supra note 105, at \*4.

<sup>&</sup>lt;sup>118</sup> *Id*.

<sup>&</sup>lt;sup>119</sup> *Id.* at \*3.

<sup>120</sup> Id. at \*4.

<sup>&</sup>lt;sup>121</sup> See European Commission, Freedom, Security and Justice Affairs, EU Putting a Stranglehold on Dirty Money, http://ec.europa.eu/justice\_home/fsj/crime/laundering/fsj\_crime\_laundering\_en.htm. The European Union has determined that "[m]oney laundering is at the heart of organised crime." Id. The website describes several directives of the European Union Council of Ministers to member nations regarding measures to adopt to combat laundering activities. Id.; see also GLAI Report, supra note 105, at \*5 (making a strong argument for legislation, as today's rules have no effect on casino club activity).

<sup>&</sup>lt;sup>122</sup> Hickson Interview, *supra* note 48; The Gaming & Leisure Association of Ireland, GLAI Code of Practice (2009), *available at* http://www.glai.ie/?Policy:Code\_of\_Practice (last visited Mar. 5, 2010) [hereinafter *GLAI Code*].

<sup>123</sup> GLAI Code, supra note 122.

**Spring 2010**]

#### LUCK OF THE IRISH

unknown

131

play. 124 The casinos would publicize the dangers of gambling addictions and would maintain a registry for the voluntary exclusion of players, in addition to intervening when players showed signs of addiction. 125

During the last week of 2007, then-Justice Minister Brian Lenihan suggested passing new legislation to legalize casinos after a government casino committee report recommended doing so. 126 His department was expected to have a bill prepared to present for debate in the Dáil in April 2008, but major political changes ensued. 127

The legislation corresponds with some, but not all, of the desires of the industry leaders. 128 For example, the legislation proposed creating a gaming commission to license and regulate the casinos. 129 The commission would license casinos that could demonstrate financial stability and that had detailed security systems. 130 Also, the legislation could require potential gaming operators to submit fingerprints to the gaming regulatory authority. 131 Moreover, the legislation proposed requiring horse tracks to obtain casino licenses. 132 Niamh Doohan, writing in the Independent, indicated that of all the existing clubs, only the Sporting Emporium could meet the proposed standards for licensing. 133

In July 2008, the government committee report was released (at least for viewing by interested parties). 134 It generally appears to be another major report on how casinos operate and how casinos are regulated in many venues. The report does emphasize, however, that Ireland should not allow gaming machines unless they are in a licensed environment. 135

Following the release of the report, the new Minister of Justice, Dermot Ahern, indicated that Ireland was ready to consider legalized casinos. He sought to establish an all-party committee to write the final draft of the legislation to legalize casinos. 136 He indicated that the all-party committee (with members from each of the major parties) need not be bound by the government

<sup>&</sup>lt;sup>124</sup> *Id*.

<sup>125</sup> Id.

<sup>126</sup> Niamh Doohan, Lenihan Set to Regulate Rather Than Ban Casinos, THE INDEPENDENT (Ir.), Dec. 30, 2007, available at http://www.independent.ie/national-news/lenihan-set—toregulate-rather-than-ban-casinos-1254876.html (last visited Mar. 9, 2010).

<sup>&</sup>lt;sup>127</sup> See supra note 103 and accompanying text; see also Global Gaming Business Staff, Irish Casinos Considered, Global Gaming Bus., Feb. 5, 2008, http://ggbmagazine.com/ issue/vol 7 no 2 february 2008/article/dateline europe (last visited Mar. 9, 2010). 128 Irish Casinos Considered, supra note 127.

<sup>129</sup> Doohan, supra note 126; see Government of Ireland, Department of Justice, Equality and Law Reform, Regulating Gaming in Ireland - Report of the Casino COMMITTEE (2008), available at http://www.inis.gov.ie/en/JELR/Casino%20(Eng)%20for% 20Web.pdf/Files/Casino%20(Eng)%20for%20Web.pdf (last visited Mar. 10, 2010) [hereinafter Regulating Gaming in Ireland].

<sup>130</sup> Regulating Gaming in Ireland, supra note 129, at 100, 158-59.

Doohan, supra note 126.

<sup>132</sup> Regulating Gaming in Ireland, supra note 129, at 12.

Doohan, supra note 126.

<sup>134</sup> Patricia McDonagh, Ahern 'hesitant' to Allow Gambling Machines, The Independent (Ir.), July 9, 2008, available at http://www.independent.ie/national-news/ahern-hestitant-toallow-gambling-machines-1429958.html (last visited Mar. 9, 2010).

<sup>&</sup>lt;sup>135</sup> Regulating Gaming in Ireland, supra note 129, at 83-85.

<sup>136</sup> Bolger Interview, supra note 63.

8:08

132

committee's recommendation.<sup>137</sup> Ahern stated, "[n]either the Government nor I have adopted any views on the report. Indeed, because the report in question makes recommendations that have significant public policy implications, it was clear that it would require further detailed analysis before Government could be asked to make a formal decision."<sup>138</sup> Although an old strategy of "delay" in the face of potential controversy may be suggested in Ahern's words, the matter appears ripe for decision making.

#### III. FUTURE OF IRISH CASINOS

The issues are ready to be debated, but is Ireland ready for casinos? An assessment of this question might follow from a review of reasons why Ireland has rejected casinos in the past and how those reasons would stand up now. Seven factors have been identified.

### A. The Irish Personality and the "All In" Spirit

Whether the references are historical ones found on Google or in many other facets of popular culture, there is an ample volume of suggestions—rightly or wrongly, that there is an "all-in" spirit that defines much of what is "Irish." Mythical heroes such as Cuchulainn fought to the death and then kept on fighting. Rebels took to the streets on Easter week in 1916, with odds and a well-armed British enemy stacked against them. And when they "won" their revolution, many couldn't or wouldn't stop. They started a civil war. 141

The Irish's seeming inability to realize the second rule of the Kenny Rogers' poker game, "know when to fold them," might make casino play a very dangerous commodity. Within the "Irish" spirit, some might suggest that a burning desire to fight on remains, but a major change has occurred as well. Ireland, until very recently, was a land of isolation politically, economically, and ethnically. Now the leadership of the land has opened its doors to world trade and immigration. A political need felt by the country's power brokers to "protect" the Irish common folk from their own foibles to blended with a realization that growing numbers of the population are eastern Europeans and

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<sup>&</sup>lt;sup>137</sup> *Id*.

<sup>138</sup> McDonagh, supra note 134; see also Bolger Interview, supra note 63.

<sup>&</sup>lt;sup>139</sup> See Clan na Bheithir, http://www.bheithir.org/ (last visited on Feb. 2, 2010); Cú Chulainn, http://en.wikipedia.org/wiki/Cú\_Chulainn (last visited Feb. 2, 2010).

<sup>&</sup>lt;sup>140</sup> See John Coakley, *The Foundations of Statehood*, in Politics in the Republic of Ireland 3, 16 (John Coakley & Michael Gallagher eds., 4th Ed. 2005); see also Politics in the Republic of Ireland app. at 488.

<sup>&</sup>lt;sup>141</sup> Coakley, supra note 140, at 20.

 $<sup>^{142}</sup>$  From the well-known song, "The Gambler." Kenny Rogers, *The Gambler*, on The Gambler (United Artists 1978).

<sup>&</sup>lt;sup>143</sup> Ireland joined the European Union in 1973. See EUROPA, European Countries – Member States of the EU – Ireland, http://europa.eu/abc/european\_countries/eu\_members/ireland/index\_en.htm (last visited Mar. 10, 2010).

<sup>&</sup>lt;sup>144</sup> Interview with Tom Graham, History Professor, New York University Dublin Program, in Dublin, Ir. (Oct. 7, 2007) [hereinafter Graham Interview].

133

Asians.<sup>145</sup> The forces of paternalism are not as strong when directed toward citizens who seem more to be outsiders than one's own. Moreover, as we see with the second factor, the "Irish" can no longer tell themselves to "Let it Ride, we have nothing to lose." There is now much to lose—money.<sup>146</sup>

### B. Poverty and Casino Prospects

While leaders might possibly feel that the Irish may have needed protection from the effects of innate personality drives, it also could be suggested that some economic protections would be appropriate. Casinos work best when they are located to exploit markets—markets comprised of people with money. Time and again, it has been said, "The Irish do not have money, hence there are no casinos." A government official offered that the law against casino gambling was in place to "protect the poor." Others told me the same. 150

Ireland was engulfed in poverty during colonial domination by the English and by its own leaders (e.g., éamon de Valera) who glorified an isolated rural economy. But steps toward development took hold as Ireland joined the European Union in 1973, which produced positive economic results as the European Union invested in Irish infrastructure. In the twenty-first century, the country has witnessed prosperity and a new phenomenon: more immigrants coming to Ireland than people leaving. For instance, Professor Tom Graham has indicated that 300,000 Polish and 80,000 Chinese immigrants have come to Ireland in the past ten years. According to Irish scholar and author David McWilliams, Ireland now has more immigrants per head than "almost any other state in the Western World."

<sup>&</sup>lt;sup>145</sup> *Id*.

<sup>&</sup>lt;sup>146</sup> Coakley and Gallagher write that "[t]he cult of political violence has, indeed, played a significant role in Irish history, but the evidence suggests that the Irish have buried the rifle." John Coakley, *Society and Political Culture*, in Politics In the Republic of Ireland, *supra* note 140, at 36, 59. Relevant to this discussion is their commentary on political culture in Ireland. *Id.* at 50-68.

<sup>147</sup> Graham Interview, supra note 144.

<sup>&</sup>lt;sup>148</sup> Interview with Michael Walsh, Ireland Department of Justice, Equality and Law Reform, in Dublin, Ir. (Oct. 5, 2007).

<sup>&</sup>lt;sup>149</sup> *Id*.

<sup>&</sup>lt;sup>150</sup> *Id.*; e-mail from Professor John Dombrink, Social Ecologist, University of California, Irvine, to author (Oct. 21, 2007, 07:25:00 PST) (on file with author) (confirming the sentiment by referring to Ireland as being in the recent past "a Third World Country"); author's personal conversation with cab driver from downtown Dublin to Clontoff (Oct. 6, 2008) (cab driver shared same sentiment as Professor Dombrink); Graham Interview, *supra* note 144 (noting that "the Irish didn't have money, hence there were no casinos"). A further discussion of poverty and casinos is found in William N. Thompson, *West Africa*, *in* Int'l Casino Law 510, 510-11 (Anthony N. Cabot et al. eds., 3d ed. 1999).

<sup>&</sup>lt;sup>151</sup> See Mary C. Bromage, De Valera and the March of a Nation (1956).

<sup>&</sup>lt;sup>152</sup> Graham Interview, supra note 144.

<sup>&</sup>lt;sup>153</sup> *Id. See, e.g.*, Sean Dorgan, *How Ireland Became the Celtic Tiger*, The Heritage Foundation, June 23, 2006, http://www.heritage.org/research/worldwidefreedom/bg1945.cfm (last visited Mar. 10, 2010).

<sup>&</sup>lt;sup>154</sup> Graham Interview, *supra* note 144; *see also* POLITICS IN THE REPUBLIC OF IRELAND app. at 463-64 (analyzing Ireland's demographic data in population and social indicators for the time period 1841-2002).

<sup>155</sup> DAVID McWilliams, The Pope's Children (2005).

134

With prosperity, Irish are becoming heavy spenders. McWilliams has documented very excessive contemporary spending on luxury items—especially automobiles—and on food, drink, and drugs. Only in recent years have major investors seen possibilities in cultivating gambling proclivities among the Irish by offering casino games.

# C. Corruption in Politics and Legalized Casinos Do Not Form Good Partnerships

Until the recent years of prosperity, the political attention span of the Irish people did not leave much time for things other than the spirit of nationalism. The consumption of the public mind with "what it is to be Irish" caused major political interests to neglect efficiency and honest administration in public affairs. Localism, nepotism, and outright corruption left a mark on the body politic. 159

Political office holders became auctioneers, traders, and bargain makers for a variety of commercial interests. The main goal was to put together coalitions of bargainers so that political office holders could win elections. Politicians accepted policies creating government corporations that were used as vehicles for patronage. <sup>160</sup> In the work of American political scientist, Daniel Elazar, the political culture of Ireland reflected that which is called the "individualistic culture." <sup>161</sup>

The text of Neil Collins and Mary O'Shea on corruption in Irish politics flushes out the details on several fronts. In the 1990s, the misuse of office was revealed with national tribunals focusing upon several scandals. Deep down in leaders' minds, they must have asked: Would this perceived atmosphere of corruption be exacerbated with the establishment of casinos?

As prosperity replaced poverty, attention shifted, and citizens expected leaders to deliver services worth the tax moneys they gave the government. The current inquiries are perhaps making the point clear that corruption is no longer accepted. Leaders have noticed that corrupt acts may result in exposure and ballot repudiations, or even more serious consequences. 166

<sup>157</sup> *Id.* at 3-6.

158 Deirdre Hennessy, A Study of Political Corruption in the Twentieth Century Ireland (2004) (unpublished B.A. dissertation, University College, Cork, Ireland) (on file with author); *see also* Neil Collins & Mary O'Shea, Understanding Corruption in Irish Politics 60 (2000). In corruption perception rankings, Ireland is ranked nineteenth. *Id.* 

<sup>&</sup>lt;sup>156</sup> *Id.* at 3-13.

<sup>&</sup>lt;sup>159</sup> See sources cited supra note 158.

<sup>160</sup> See sources cited supra note 158.

<sup>&</sup>lt;sup>161</sup> Daniel J. Elazar, American Federalism: A View from the States 94 (Thomas Crowell 2d ed. 1972). Elazar postulates that the "individualistic" political culture "emphasizes the centrality of private concerns." *Id.* The government seeks "utilitarian reasons" in its actions, without giving concern for "questions of the 'good society.'" *Id.* 

<sup>&</sup>lt;sup>162</sup> See generally sources cited supra note 158.

<sup>&</sup>lt;sup>163</sup> See sources cited supra note 158.

<sup>&</sup>lt;sup>164</sup> See sources cited supra note 158.

<sup>&</sup>lt;sup>165</sup> See sources cited supra note 158.

<sup>&</sup>lt;sup>166</sup> See generally European Regional Development Fund (ERDF), EDRF Financial Control Unit, Dep't of Finance, Structural Funds in Ireland – Audit Environment, Presentation at the Seminar on Financial Management & Control (Sept. 2005), http://www.bmwassembly.ie/

#### LUCK OF THE IRISH

unknown

**Spring 2010**]

135

8:08

Moreover, Irish participation in the European Union requires that political officials spend public funds responsibly.<sup>167</sup> Grants from the European Union are authorized by persons outside of the control of Irish public officials. 168 An evolving process over the last thirty years has probably had an impact. Political leaders today would be more reluctant than they were a generation ago to participate in overt payoffs that might otherwise be associated with the presence of casinos. Casino gambling no longer offers a major threat to proper government.

#### D. A Culture of Latent and Manifest Violence

In 1987, I visited a casino in San Sebastian, Spain, located in the Londres Hotel.<sup>169</sup> The casino was empty except for a few machine players. The manager indicated that the casino was failing due to a lack of local players, despite it being the only casino in a region (País Vasco) of 2.1 million.<sup>170</sup> The casino is in Basque Country, 171 and Basque separatists had initiated an active campaign of bombings, assassinations, kidnappings, ransom demands, and other guerilla warfare activities in the area. People with wealth carefully hid their resources from public view lest they become victims.<sup>173</sup> If they had desires to participate in casino gambling, they ventured to faraway places in other countries or to Madrid or Spanish casinos on the Mediterranean coast. The local casino was to be avoided.

The San Sebastian experience serves as a model that casino investors desire to avoid. The model unfortunately has marked parallels with the Irish political milieu of the twentieth century.<sup>174</sup> The civil war never totally ended, 175 but perhaps Ireland has entered a new era. The milieu of violence

news/conferences/FCU%20Audit%20Environment%202005.ppt (last visited Mar. 10, 2010); see also Colin Maynard, Audit by SAIs of EU Funds at the VI European Organisation of Supreme Audit Institutions (EUROSAI) Training Event: Seminar on Better Auditing of Public Aids and Subsidies (Nov. 6-8, 2006), http://www.nku.cz/seminars/eurosai-prague-2006/ documents/Paper\_2\_EU\_FUNDS.rtf (last visited Mar. 10, 2010) (describing European Union supervision and audit).

- <sup>167</sup> Maynard, *supra* note 166.
- <sup>168</sup> Ireland's National Development Plan, What are the E.U. Structural Funds?, http://www. ndp.ie/viewdoc.asp?fn=/documents/EU\_Structural\_Funds/overview/what\_are\_eu.htm (last visited Mar. 19, 2010).
- 169 I visited the casino on January 10, 1987. The San Sebastian situation was discussed in more detail in William N. Thompson, Spanish Love of Games, Gambling, Evident Throughout Country, Las Vegas Sun, Apr. 17, 1988, at 6D.
- 170 European Commission, Labour Market Information País Vasco, http://ec.europa.eu/ eures/main.jsp?catId=453&acro=lmi&lang=en&countryId=ES&regionId=ES2&nuts2Code= ES21&nuts3Code=null (last visited Apr. 19, 2010) (2008 population figures).
- <sup>172</sup> For a general discussion on Basque terrorism, see Basque Terrorism in Spain 1968-Present, http://www.onwar.com/aced/data/sierra/spain1968.htm (last visited Mar. 10, 2010).
- <sup>174</sup> My tour of Northern Ireland in October 17-19, 2007 revealed a very ugly wall, constantly guarded, dividing Protestant and Catholic residential areas in Belfast. A Protestant housing area located in the center of Derry was separated from the rest of the community by a wire fence topped with massive strands of barbed-wire. A peace accord has been signed, but some evidently think more than its words are necessary to keep the peace.
- <sup>175</sup> See McWilliams, supra note 155, at 229-30.

[Vol. 1:121

has waned with prosperity and with the influx of new ethnic groups. As mentioned above, now people have something to lose besides their ethnic dignity—they have money to lose. Moreover, the force of religion on people's lives has abated, making ethnic battles less relevant. Peace accords negotiated on Easter Sunday 1998 have taken hold. It could be that a signal has been given out that casino gambling can exist without fear of surrounding violence in both the north and south of Ireland.

#### E. Desire to Keep Gambling at Home

High on the list of reasons promoters use to legalize casino gambling is the cry that neighboring venues have casinos and are taking "our" money away. He list are land was not driven to accept casinos under this premise because Ireland had no casinos on its borders. Its sole land border is with Northern Ireland, which has no casinos. Moreover, the Irish people have endured economic hardships precluding casual recreational travel to other lands that have casinos. Mediterranean beaches filled with Germans and English have, until the recent years' prosperity, been devoid of a major Irish presence. Moreover, the close-by foreign casinos of Scotland, Wales, and provincial England have been very small facilities that catered to local, not tourist populations. These casinos had little appeal even for affluent Irish. Additionally, the casinos projected an English personality and aloofness not welcoming to many Irish.

Ireland has not, until the twenty-first century, felt a strong need to have casinos in order to keep Irish gambling money at home. Now, this situation has been altered due to two new factors. First, internet gambling has invaded Ireland as it has every other country of the globe.<sup>183</sup> Second, the recent era of affluence has resulted in many more overseas trips for the Irish.<sup>184</sup> These trips abroad are for all kinds of recreational purposes, which are likely to include casino gambling forays. The appeal of "let's bring the gambling dollars home" now has a resonance it never had before.

11

<sup>&</sup>lt;sup>176</sup> Part of the Peace Agreement of 1998 authorized a vote, wherein, the people of Ireland dropped their constitutional claim to the lands now called Northern Ireland and held it to be part of the United Kingdom. *Id.* at 233.

<sup>&</sup>lt;sup>177</sup> RICK STEVES & PAT O'CONNOR, RICK STEVES' IRELAND 2007 295, 373 (2007).

<sup>&</sup>lt;sup>178</sup> See John Dombrink & William N. Thompson, The Last Resort: Success and Failure in Campaigns for Casinos (1990).

<sup>&</sup>lt;sup>179</sup> Northern Ireland is part of Great Britain. In accordance with the Gaming Act of 1968 (U.K.), Northern Ireland was not permitted to have casinos. Gaming Act, 1968, c.65, § 54(2). *See also* David Miers, *Great Britain*, *in* Int'l Casino Law, *supra* note 150, at 383 (Cabot et al. eds., 1999).

<sup>&</sup>lt;sup>180</sup> I made personal visits to southern Spain in 1986 and 1987.

<sup>&</sup>lt;sup>181</sup> See Miers, supra note 179, at 386.

<sup>&</sup>lt;sup>182</sup> Quite often, the Irish and English do not "get along" easily in social settings. Interviews with Stephen McPhilemy, Tour Director for Ireland, Rick Steves Tours, in Dublin, Ir. (and traveling through Ireland) (Oct. 8-20, 2007).

While local gaming entrepreneurs are prohibited from establishing and operating internet gaming sites on Irish soil, Irish residents are legally permitted to access and play upon sites that are foreign to the island. Hickson Interview, *supra* note 48; *see also* Review of Gaming and Lotteries Acts 1956-1986, *supra* note 5, at 51-52.

<sup>&</sup>lt;sup>184</sup> McWilliams, supra note 155, at 12.

**Spring 2010**]

137

# F. Political Influence of the Catholic Church in Ireland

In Ireland, "The" Catholic Church has been an influence dampening efforts to legalize casinos. The power of the Church has been a major force in Irish politics for many centuries. In 1935, Taoiseach éamon de Valera spoke about his nation's relationships with the Church: "Since the coming of St. Patrick, fifteen hundred years ago, Ireland has been a Christian and a Catholic nation. All the ruthless attempts made down through the centuries to force her from this allegiance have not shaken her faith." The influence of the Church over the people was found in part by the large number of clerics vis-à-vis laity. This was a result of economic pressures that propelled masses that had no other viable options save emigration to seek out religious vocations. Therefore, common folk had many priests and nuns available to observe their daily trifles and to warn them to stay on the proclaimed path toward righteousness. Moreover, church views were not openly challenged as political leaders of both major parties did the bidding for the Church unasked.

However, the influence of the Catholic Church in Ireland cannot be as effective as a political force now in the twenty-first century as it has been over the past century. The Church's influence began to change as Ireland dropped its economic isolation policies and joined the European Union in 1973. 188 Europe and the rest of the secular world came knocking at Ireland's door. The number of clergy has reduced considerably in recent decades. 189 Clergy no longer has a direct presence in the daily activities of the people. Attendance at weekly mass, which was once universal, has fallen to about half the population. 190 The Church's views on issues involving sex, marriage, and gender relations are no longer controlling. While abortion is still banned, the Church no longer has a veto threat over issues which a majority of the people support. 191 The exposure of clergy as abusers in sex scandals involving children, and in scandals involving orphanages, has dealt a major blow against the unchallenged reputation the Church enjoyed in the past. 192 Censorship is at an end. 193 Political leaders can debate casino legalization without fear of lost political support.

# G. Competitive Venues Wishing to Suppress Casinos: Gaming and Non-Gaming

The Irish public has been served by several entertainment venues whose existence could be compromised by the legalization of casino facilities. Of

<sup>&</sup>lt;sup>185</sup> See id. at 229; see also Bromage, supra note 151.

<sup>&</sup>lt;sup>186</sup> John Fulton, State, Religion and Law in Ireland, in Church-State Relations, 253, 257 (Thomas Robbins & Roland Robertson eds., 1987).

<sup>&</sup>lt;sup>187</sup> Graham Interview, supra note 144.

<sup>188</sup> Coakley, supra note 140, at 44-48; see also EUROPA, supra note 143.

<sup>&</sup>lt;sup>189</sup> Coakley, *supra* note 140, at 45-46.

 $<sup>^{190}</sup>$  Id. at 45; see also Terrance Brown Ireland: A Social and Cultural History, 1922 to the Present 230-31 (1985).

<sup>&</sup>lt;sup>191</sup> Woods Interviews, *supra* note 7.

<sup>&</sup>lt;sup>192</sup> McWilliams, *supra* note 155, at 232-33.

<sup>&</sup>lt;sup>193</sup> *Id.* at 229-32.

[Vol. 1:121

these venues, two interests have actively led policy makers to shy away from legalizing casinos: (1) Irish public houses or pubs, and (2) betting shops.

There are 11,000 pubs in Ireland, which is nearly three times the number per person as in England. 194 The pubs are privately owned, and unlike those in England, they are not owned by the major brewery companies. 195

However, pubs may no longer have the same influence over policy makers because they do not have the political or social influence they once enjoyed. Until recently, government efforts to limit drinking at pubs failed. 196 However, government action may not be needed now to limit drinking because of recent laws and social trends. Pubs have lost patronage and influence in the twentyfirst century as laws now ban smoking in public places and give offenders a zero tolerance for any drinking and operating of motor vehicles.<sup>197</sup> Furthermore, the influence of the pub as a cultural icon has suffered a bit with a national prosperity that finds people going to off-premises stores and taking alcoholic beverages to their homes where friends and guests gather for entertainment.

Betting shops are not an obstacle to casinos now either. The betting shops did not emerge as places for social and financial activity until laws allowed offtrack betting in 1926.<sup>198</sup> As I wrote for *Casino Lawyer* in 2008:

There are now an estimated 1,100 licensed betting shops in Ireland and, unlike the pubs, they are growing in numbers. . . . [M]any of the shops are owned by major companies. In the past, their voices were likely to be negative in regard to casinos. . . . [Today is different.] [T]he bigger players in the industry, such as Paddy Power, Ladbrokes and Chronicle (which shares a facility with the Sporting Emporium Casino Club in Dublin), are not at all opposed to casinos. Indeed, they want to have casinos legalized so that they may participate in casino gaming by owning and operating the casinos. 199

# THE STAGE FOR CASINOS IS SET

In 2009, with the stage set and the atmosphere for legislation right, final legislative proposals for legalizing casinos were presented to the Dáil. However, as the year progressed, the forces of inertia felt by gaming policy makers

<sup>&</sup>lt;sup>194</sup> William N. Thompson, Will Ireland Legalize Casinos in 2008?, 4 Casino Lawyer 2, 14

<sup>195</sup> Id. at 14. See also Denis Conniffe & Daniel McCoy, Alcohol Use in Ireland: Some Economic and Social Implications (2000); James Helm, Changing Habits Threaten Irish Country Pubs, BBC News (2007), http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/66256 87.stm (last visited Mar. 10, 2010) ("Pubs are privately run here, rather than being owned by big brewery chains."); Ireland Travel Guide, Pubs in Ireland, http://www.irelandlogue.com/ pubs?print=1 (last visited Mar. 10, 2010) ("Most pubs belong to a brewery."). The U.K., with 60 million people, has about 60,000 pubs. CIA – The World Factbook – United Kingdom, available at https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html (last visited Mar. 19, 2010); Caterersearch.com, Number of Pubs in the UK - Industry Data, http://www.caterersearch.com/Articles/2008/10/06/53051/number-of-pubs-in-the-uk-industry-data.htm (last visited Mar. 19, 2010) (estimating 57,500 pubs in the UK in 2007).

<sup>&</sup>lt;sup>196</sup> Woods Interviews, *supra* note 7.

<sup>&</sup>lt;sup>197</sup> Helm, supra note 195.

<sup>198</sup> Betting Duty Regulations, 1926 (S.I. No. 65 of 1926) (Ir.), available at http://www.irish statutebook.ie/1926/en/si/0065.html (last visited Mar. 10, 2010).

<sup>&</sup>lt;sup>199</sup> Thompson, *supra* note 194, at 14.

Spring 2010]

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139

in many other venues seemed to affect Irish politicians. Nothing was done. However, at the same time, all agreed that the time for change had indeed come.

In Dombrink and Thompson's 1990 study, *The Last Resort*, they suggested that a veto model could explain a demonstrated reluctance to embrace the legalization of casinos in American states.<sup>200</sup> If opponents of casinos could rally around but one major factor in a set of negative factors, they could defeat efforts at legalization. Factors included the venue's historical experience with gambling, the integrity of casino sponsors, the general economic atmosphere, the presence of rival gaming interests, and the position taken by major elite interests.<sup>201</sup>

In Ireland, it may be suggested that a similar model could be in play. The seven major factors discussed above may indeed constitute veto factors. In the past, each of the factors served as a major block to any and all attempts to win legalization of casinos. However, the factors have witnessed an oncoming atrophy, and each may soon cease to be a force in stopping casinos. Nonetheless, to a degree, they seem to persist in creating a state of inertia that still makes predictions of impending legalization a risky venture. Casinos persist with a grey posture. Lucky Gaelic green is still but an Irish hope.

 $^{200}$  See, e.g., Dombrink & Thompson, supra note 178, at 172.

<sup>201</sup> *Id*. at 94-95.

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