Alcohol licensing, crime and disorder

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Abstract
Licensing law in England and Wales has over the past 600 years moved through cycles of liberalisation and constraint. The latest liberalising period can be traced from the 1960s, culminating in the passing of the Licensing Act 2003. Yet even before the Act came into force in 2005 the pendulum had swung back towards constraint. The promised laissez faire approach to alcohol availability (and a continental cafe culture) quickly evaporated as ‘Booze Britain’ was propelled through a period of liberal constraint into a severe bout of legislative repentance. Cheap alcohol, increased availability, binge drinking and town/city centre crime and disorder presaged calls for minimum pricing, tough enforcement and even a return to the concept of ‘need’ as a basic criterion in licensing applications. These matters, together with the implications for criminology of state efforts to control our favourite drug, are considered in this chapter.


1. Introduction

Criminologists have long posited a link between crime and alcohol. As Radzinowicz and King (1977, p.102) put it ‘the links between crime and alcohol are long standing and well known’ However, this link is often assumed rather than demonstrated by research (see Light 1994) and it is generally accepted that there can be no single direct cause model to explain the relationship (Pernonen 1982). The purpose of this chapter is not to chart the research findings on alcohol and crime, rather to focus on the relationship between licensing law, alcohol availability and crime and disorder. And it is disorder and public displays of alcohol-related anti-social behaviour that appear most closely linked with licensing provisions. This is true historically and has assumed a major prominence in Britain over the past decade or so.

The Licensing Act 2003, with its potential for ‘round the clock drinking’ in England and Wales, has pushed alcohol to the forefront of the alcohol/crime debate and spawned a chain of subsequent legislation seeking to penalise and control irresponsible outlets and irresponsible drinkers. Yet within this debate, rather than concentrating simply on badly behaved individuals, the more crucial question must be whether over-provision of outlets and a low unit price for alcohol is implicated in the aetiology of alcohol-related crime and disorder. Rather than devising ever more methods to tackle individual alcohol users and abusers should we be concerned more

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2 Results from the 2008/09 British Crime Survey show that 26 per cent of respondents thought that people being drunk or rowdy in public places was a very or fairly big problem in their area (Home Office 2010a).
with regulation of the supply and price of alcohol in our society? The latter perhaps by way of taxation or minimum unit pricing; the former by utilisation of the licensing regime to manage the supply of alcohol. This paper looks at the role of licensing law in controlling the availability of alcohol and its historical development. It then charts the shift from the laissez faire approach developed in the late twentieth century, through the philosophy of liberal constraint underpinning the 2003 Act and concludes with the current outburst of legislative repentance.

The Licensing Act 2003 has attracted much public debate by virtue of its abolition of permitted hours for the sale of alcohol and the introduction instead of possible 24 hour drinking (see further Light 2005). The Act, it is said, has caused an epidemic of alcohol abuse and ‘binge drinking’ in England and Wales.

However, this contention is wrong on at least two grounds. First, the Act has not heralded the introduction of a 24 hour drinking culture. Relatively few 24 hour licences have been granted to public houses and nightclubs and, of those that have been, few utilise the full hours (see further DCMS 2010, p.24). While there has been an increase in the hours for which alcohol is available this has been incremental (for example, from 11pm to midnight for a local public house) rather than radical. Secondly, increased alcohol consumption and related problems including crime and disorder pre-date the Licensing Act 2003 (which did not in any event come into force until late 2005). A number of inter-related developments gave rise to an expansion of alcohol outlets, including those open to the early hours of the morning, in what has become known as the ‘night time economy’ with its attendant alcohol-related problems.

Chief among these is the abolition in 1999 of the ‘need’ criterion as a method of controlling the supply of alcohol. Put simply, in order to secure an alcohol licence for premises such as a new public house or off-licence it would have to be shown to the satisfaction of the licensing authority that there was a need or demand for the new outlet. For example, if in a town centre there were three public houses and a fourth wished to open, the applicant for the new licence would have to show that there was demand in that area for the new premises. This may be attempted, for example, by producing market research, possibly showing crowding at the existing premises, or by demonstrating how the new premises were to differ from existing outlets – perhaps aiming at a ‘family atmosphere’ or to be ‘food led’. Existing licence holders would often object to the granting of the new licence on the basis that there was no need for a new outlet in the area. They too may produce market research and call expert evidence to support their opposition to the new licence.

The need criterion, a central feature of licensing laws for at least 600 years, has been resurrected partly, by the government guidance which accompanied the 2003 Act and in the consultation document published by the coalition government in 2010, under the guise of ‘over-provision’ and ‘cumulative impact’ (see below).

2. Development of licensing law

Historically, in England and Wales, licensing provisions have sought to regulate the quality and price, manner of sale and availability of alcohol. The last of these, availability, is regulated in three ways: statutory control of licensed hours and persons permitted to purchase alcohol, together with restriction of the number of outlets, through the mechanism of ‘need/demand’:

The policy of restricting the number of retail outlets for intoxicating liquor to the minimum regarded as necessary for the legitimate needs of the population is older than the licensing law itself, although its application by the licensing authorities, and its overt support by central government has varied considerably from time to time. (Home Office 1972, para.14: 295)

3 The history is based on work done for an Alcohol Education Research Council funded research project (see Light & Heenan 1999).
Licensing history is characterised by successive moves between the tightening and the relaxation of controls (for a more detailed early account see Home Department 1932, Appendix 2, Webb & Webb 1963, Williams & Brake 1980). Many of the current debates on reform of the Licensing Act 2003 echo those that surrounded earlier statutes.

For present purposes, probably the earliest legislative provisions restricting the supply of alcohol are to be found in a late fifteenth century statute. This provided that two justices could withdraw from alehouses in their district permission to sell intoxicating liquor if they felt the alehouse was considered unnecessary. This was followed by an Act in 1552 which introduced a statutory system for the licensing of alehouses; which still forms the basis of the present system. Any two justices had full discretion in the issuing of new licences and a commonly cited reason for refusal was the existence within the area of sufficient licences to meet demand. Those licensed were required to enter into a bond for the maintenance of good order.

However, the end of the seventeenth century saw a relaxation of controls when in 1690 distilling, hitherto a monopoly of royal patentees, was thrown open (the retailing of spirits was free of all licensing requirements and attracted a very low rate of excise duty); and justices became less restrictive in issuing alehouse licences. The number of licensed premises multiplied rapidly and there was a huge increase in alcohol consumption. Gin shops and coffee houses (often gin shops under another name) flourished (for a graphic depiction see Hogarth’s ‘Gin Lane’) and regulation of the behaviour of licensees appeared to be virtually non-existent. It was not uncommon for gin to be given in lieu of wages or to be handed out free in chandlers and brothels. Gin shops advertised that their customers could get ‘drunk for a penny, dead drunk for two-pence and straw for nothing’ (An early example of ‘irresponsible retailing’).

As a result restrictions were introduced by an Act of 1729 but it was not until the second half of the eighteenth century that concern over the deleterious effects of alcohol consumption produced further statutory measures aimed at controlling the ‘demon drink’; with increased supervision and control of licensed premises as well as increased excise duty. However, consumption remained high, not surprisingly, as most of the measures were ignored and went unenforced. However, towards the end of the century both public attitudes to alcohol and the practice of the licensing justices began to harden. Much of this change has been attributed to a campaign against vice and immorality, led by John Wesley and William Wilberforce:

Each county began to recognise that too many alehouses had been licensed which had become from want of regulation and supervision 'haunts of idleness', nurseries of sottishness' and 'seminaries of crime'. Benches resolved to grant no new licence but where the convenience of the public absolutely required it or until the present number had been considerably reduced. (Home Department 1932, para.37)

Yet again, however, the early years of the nineteenth century saw this process once more reversed. In 1817 the Parliamentary Committee on the State of the Police in the Metropolis strongly recommended a free trade in liquor with no licensing controls. Public opinion backed the report. Under the Beerhouse Act 1830 justices lost their power to refuse a licence to a beerhouse. A householder could apply for a licence from the Excise at a cost of two guineas which would allow the sale of beer in the dwelling house for consumption both on and off the premises (‘Tom and Jerry shops’ as they were called). There was no need to obtain a licence, and the character of the person running the business was not taken into account. The number of beerhouses soared:

Houses of this description sprung up in every corner of the land, by the roadside, in every city, town and village ... have become the resort of individuals of depraved,

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4 11 Henry VII c.2 (1494)
5 5&6 Edward VI c.25 (1552)
6 2 Geo.11 c.28 (1729)
abandoned and desperate character, (who are) encouraged in but too many cases by the loose principles of those who have adopted this trade. (*Bristol Journal*, 25 October 1834)

As Sidney Smith put it: 'The new beer bill has begun its operations. Everybody is drunk. Those who are not singing are sprawling. The Sovereign people are in a beastly state' (early ‘binge drinkers’?). 'Indescribable orgies occurred, accompanied by gambling, brutal amusements and licentiousness' (see House of Commons 1833: 33).

However, in but a few years, the pendulum swung back again towards restraint. (Much as has happened with the Licensing Act 2003.). In 1834, a Select Committee was appointed to:

…enquire into the Extent, Causes and consequences of the prevailing Vice of Intoxication among the labouring Classes of the United Kingdom in order to ascertain whether any Legislative Measures can be devised to prevent the further spread of so great a National Evil. (House of Commons 1834).

The Committee concluded that there were too many public houses and that spirits were too cheap and easily available (a commonly expressed view today – as is the notion that those causing alcohol-related disorder come exclusively from the ‘labouring Classes’). The report combined with pressure from the temperance societies led to the passing of the Wine and Beer House Act 1869 which brought beerhouses back into the licensed system. A number of Licensing Acts followed (most notably in 1872 and 1904) which imposed tough restrictions on the supply of alcohol.

The Victorian obsession with liquor and the work of the temperance movement saw the number of licences fall dramatically. The temperance movement found added support during the war years of 1914-18 for 'Drink is doing more damage in the War than all the German submarines put together' (Lloyd George in a speech on 28 February 1915). However, 'moderation' rather than prohibition was to be the key. This approach continued post-war, with the Royal Commission on Licensing:

The reader will find, also, historical evidence, if such be needed, for certain basic truths, the neglect of which must prejudice any attempt at licensing reform: for example, that undue relaxation of control produces intolerable social evils; that legislative regulation that goes too far beyond current public opinion is simply not administered; and that cheapness of intoxicants is always a powerful stimulant to intoxication. (Home Department 1932, para.11)

However, the Royal Commission felt able to report the end of the drink problem and to state that drunkenness had 'gone out of fashion'. By the outbreak of the Second World War the number of on-licences had fallen by a further 20 per cent and at the end of the war (during which many licensed premises had been damaged or destroyed) the British approach to liquor and liquor licensing could best be described as restrictive.

But once again, as the post-war austerity of the fifties gave way to the liberalism of the 'swinging sixties' and the affluence of 'never had it so good' politics, a consensus emerged in favour of a liberalisation of liquor licensing. The post-war years had seen the temperance movement recede and the Parliamentary debates on the 1960 Licensing Bill ‘showed how far opinion had moved from treating the question of drinking as a moral issue to deciding matters of social convenience' (Lee 1985: 220).

The Licensing Act 1961 heralded the commencement of a more relaxed legislative attitude towards alcohol licensing and by the 1970s there was increased pressure for liberalisation of licensing law brought about by: the election of a Conservative government in 1970 which was favourably disposed to licensing reform; lobbying by the brewers, which had made significant political contributions to the Conservative Party in the three years before the election and expressed itself 'broadly in favour of a more relaxed licensing system'; the tourist industry, which
saw benefits from liberalisation, particularly of licensed hours; and public opinion which ‘was highly conducive to liberal reforms of this kind’ (Baggott 1990: 118).


The spur to the setting up of the Erroll committee had been the Monopolies Commission report in 1969 on the supply of beer, which recommended a substantial relaxation to the licensing law. Erroll concluded that, as society condoned the moderate use of alcohol, any legislation controlling availability 'will have to ensure that the response to public demand does not fall below a minimum level of acceptability', but that changes to keep step with consumer demand 'should not be on such a scale as to bring about any significant increase in alcohol consumption'. Further, the Committee stressed that while it did not subscribe to the view that there was 'an alcohol problem', account should be taken 'of more immediate problems such as drunkenness, public order, amenity and public safety' (para.6.12). Nevertheless Erroll recommended liberalisation and the abandonment of the need criterion:

The legitimate purposes of licensing control can be achieved without the ambiguities and complexities resulting from the present absolute discretionary power of the justices. It is not part of the licensing justices' functions to assess whether there exists a market demand for any proposed new facilities, or to protect existing licence holders against competition (para. 8.32).

While the setting up of the enquiry was widely welcomed, as there was general agreement that the licensing provisions were hopelessly outdated, the report was not well received. This is not surprising, for ignoring its own concern at the lack of adequate research and its own reference to the adverse social implications of increased consumption:

The intentions of the Erroll Committee were succinctly expressed by Sheila Black, a member of the committee. Writing in the Financial Times (6 December 1972) she said "We all knew that what we wanted basically, was total freedom for all, to drink when and where they liked". (Williams & Brake 1980, p.169)

In particular, the medical lobby strongly opposed the liberalising recommendations, criticising them as based on commercial rather than public health considerations - 'From the public health point of view the report's main proposals must be condemned as untimely' (British Medical Journal 16 December 1972). A paper from a group of ten psychiatrists and researchers at the Addiction Research Unit (Institute of Psychiatry, University of London) on the question of need had this to say:

The committee's decision to abolish the justices' absolute discretion is felt by us to be symptomatic of a vital change in emphasis in relation to liquor licensing which the recommendations taken as a whole represent. The likely resultant expansion in the number of outlets... is, we feel, treated too lightly by the committee, while the committee's rejection of contra-arguments without comment or evidence is a matter for concern. (quoted in Williams & Brake 1980: 173)

Although the Erroll Committee's main recommendations were not implemented, its findings gave succour to those propounding liberalisation, in particular the drinks industry, and the days of 'need' as a method of controlling the supply of alcohol were numbered.

Progress towards this goal was impeded, at least temporarily, by the emerging public health lobby which quickly coalesced into an alliance of organisations concerned with alcohol-related harms, such as drink-drive casualties, accidents at work, drownings, liver cirrhosis and other medical conditions; as well as crime and disorder (see, for example, DHSS 1977, Royal College of Psychiatrists 1986, Royal College of Physicians 1991). Groups such as Alcohol
Concern and Action on Alcohol Abuse linked up with health care professionals, temperance led organisations, alcohol/addiction workers, criminal justice practitioners and others to put paid to any early prospects for the liberalisation of liquor licensing.7

Links were made between per capita consumption and alcohol-related harm utilising ‘consumption theory’. This states that it is not the drinking patterns of individuals that determine the levels of alcohol-related harm in a society. Rather, the indices of alcohol-related harm move in tandem with the overall level of alcohol consumption per head of the population. With per capita consumption governed by availability and price (and to a lesser extent advertising), arguments against increased numbers of licences were mounted and maintained into the 1990s (for a review of the literature see Alcohol Concern 1999, Baggott 1999).

3. ‘Laissez-faire’

A Home Office Working Group on Licence Transfers was set up in 1995 to look at ways of streamlining licence transfers but with time to spare the opportunity was taken also to look at the issue of need. A ‘Note by the Home Office’ was sent to members of the Working Group outlining the issues and stating:

The 1993 Home Office consultation paper on selected reforms to the liquor licensing system discussed the possible replacement of the licensing justices’ present absolute discretion over the grant of applications for full on-licences and off-licences by specifying in statute the only grounds on which such applications should be refused. There was a very broad measure of agreement among respondents in favour of this proposition … However, opinions differed over whether the justices should continue to be able to refuse an application for a licence on the grounds of lack of “need” or, as applies under section 17(1)(d) of the Scottish codified system, “over-provision”. (Home Office, Note WGLT95(8), A Division, September 1995)

The Note considered need or over-provision to be better left to market forces but cautioned that over-concentration in popular locations could pose risks to public order and public safety; and might also risk a rise in promotional practices encouraging excessive consumption in order for premises to survive. However, the Note concluded that the realities of business finance would mean the latter would be rare (this has proved to be rather naïve and quite wrong).

Initial responses from members of the Working Group were that there should be no test of ‘commercial need’ but that ‘justices ought to be able to take account of the “over-concentration” of licensed premises in order to safeguard against undue nuisance or threat to public order’. Positions were reserved pending further consultation with member organisations and written comments were invited for the next meeting.8 At its last meeting, the Minutes from the Working Group’s Meeting (7 March 1996), at item 15. read ‘Members… showed agreement that any system of codified grounds for refusal should not include a test of “need”’ (underlined in original).

In May 1998, the Home Office announced a Government Review of Liquor Licensing and the same year saw publication of the Government’s Better Regulation Task Force Report Licensing Legislation. The report proposed a radical overhaul of the licensing laws to be replaced by a simpler and more flexible system. The ‘inconsistency’ of the present laws was criticised, as depending on the judgment of local magistrates. It was recommended that local authorities should make licensing decisions based on national guidelines and that the role of the justices should be to hear appeals from local authority decisions. On the issue of need/demand it was said that:

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7 Although the total number of off and on-licences still increased from 105,436 in 1970 to 128,054 in 1980.
8 Home Office Note WGLT95(10) A Division, December 1995
9 Home Office, March 1996
Regulation should not be used—except through truly extreme constraints—to influence the volume and frequency with which the individual drinks. Nor should it be used to manage demand through judgements by licensing authorities over the need for additional providers. (7)

The most controversial recommendation was that alcohol licensing should be transferred from the licensing justices to local authorities. The underlying rational was twofold. First, licensing was no longer seen as having links to crime and disorder but rather as a matter of local convenience and business development. Secondly, local authorities already dealt with public entertainment (music and dancing) licences and had adopted a less restrictive approach to granting licences with no need criterion deployed.

The Magistrates’ Association and the Justices’ Clerks’ Society responded by publishing the Good Practice Guide in 1999 for licensing hearings before the justices. It effectively removed need from the licensing process. This combined with a number of other factors—a move towards deregulation, an increasingly sophisticated body of licensing practitioners, social expectations of a more European approach to licensing and a fast expanding leisure/drinks industry—led to a dramatic expansion, both in number and capacity, of licensed premises. It was now up to the market to determine the supply of alcohol.

The removal of need was the culmination of some forty years of liberalising pressure for reform. But more was to come. As was clear from Tony Blair’s text message sent to 18 year olds at the time of the 2001 election: ‘Couldn't give a XXXX for last orders? Vote Labour on Thursday for extra time’. The government review of licensing, carried out in this liberalising climate, led to a White Paper which heralded a root and branch update which included abandonment of fixed hours for licensed premises and the possibility of 24 hour licences (Home Office 2000).

4. Liberal constraint

The tension visible throughout the history of liquor licensing has been in balancing the freedom to sell and consume alcohol with the concern to limit the harmful social effects of alcohol consumption. The number of outlets had increased during the second half of the twentieth century and the abandonment of need fuelled a further increase. How was the balance to be maintained? The Licensing Act 2003 aimed to simplify and modernise licensing law; introduce flexible hours to give freedom to ‘the responsible majority; reduce crime and disorder; and give greater protection to local people against alcohol-related disorder and nuisance in their area. As the then licensing minister put it:

November 24 will signal the end of the outdated licensing system which dates back as far as the First World War. It heralds the beginning of a regime which recognises that the vast majority of people should be treated like the adults they are and gives the industry the flexibility to meet the needs of their customers. (James Purnell, 8 June 2005)

The Act has transferred responsibility for licensing from licensing justices sitting in magistrates’ courts to licensing committees of local authorities. If no representations (objections) are made to an application for a licence the authority must grant the licence without the need for a hearing. If representations are made the application goes to a hearing before local councillors. As if to emphasise further the distance between licensing and crime, responsibility for licensing was transferred from the Home Office to the Department of Culture, Media and Sport where it was located in the department of tourism. The overall philosophy of the Act was that entry to the licensed trade should be liberalised as should opening hours. The constraint came in a promise to get tough with those engaging in alcohol-related anti-social behaviour and to make it clear to licensed premises that if they acted irresponsibly their licences could be made the subject of a review at which action could be


taken against them – this ranges from adding conditions to the licence (such as a requirement to use door staff or to install CCTV) to suspension or even removal of the licence.

However, even before the Act had come into force in 2005 the pendulum had once again swung away from liberalisation and towards constraint. As we entered the twenty-first century alcohol-related problems, most visibly public displays of crime and disorder, had become a serious cause for concern. ‘Binge Britain’ sprang into the headlines, on to our television screens and into popular usage (see further Plant & Plant 2006).

5. Legislative repentance

The first steps towards constraint came in the statutory guidance issued with the Act and published by the DCMS in 2005. Two measures were introduced that were aimed towards addressing alcohol-related crime and disorder – ‘cumulative impact’ and ‘high volume vertical drinkers’ (HVVDs). Licensing authorities are able to introduce a cumulative impact policy in any geographical area suffering alcohol-related problems. Once the policy is introduced the presumption is that any application for a licence in that area will be refused unless the applicant can show that the additional licence will not add to or make worse the alcohol-related problems in the area. Some 130 of these policies, which resemble the concept of need, have been introduced. HVVDs policies can be adopted in respect of individual premises where it is considered necessary for the prevention of crime and disorder. This involves setting a prescribed capacity, with an appropriate ratio of tables and chairs to customers and registered security teams to control entry for the purpose of compliance with the capacity limit and to deny entry to those who appear drunk and disorderly. In contrast to the high take-up of cumulative impact policies it seems that no premises have been subjected to the HVVD provisions.


The then government’s conclusion on the first three years of the operation of the Act seems once again to focus on a troublesome group of drinkers (the ‘labouring Classes’ of old?) rather than to locate the effect of the Act within general considerations of alcohol use and its availability in society:

Our main conclusion is that people are using the freedoms but people are not sufficiently using the considerable powers granted by the Act to tackle problems, and that there is need to rebalance action towards enforcement and crack down on irresponsible behaviour. (Andy Burnham, Secretary of State for Culture, Media & Sport 4 March 2008)

A number of Acts followed which introduced a series of measures aimed to toughen up enforcement of the Act. The first was the Violent Crime Reduction Act 2006 which introduced: increased penalties for ‘persistently selling alcohol to children’ (a major government concern through the last five years); drinking banning orders (a sort of alcohol ASBO used to ban troublesome drinkers from licensed premises), summary review of premises licences (which allowed premises where serious problems had occurred to be closed without the need first for a hearing) and alcohol disorder zones (in which licensed premises would be required to pay towards the cost of alcohol-related problems in the area – so far
none has been introduced). This was followed by the Police and Crime Act 2009 which introduced: the offence of being under 18 years and ‘persistently possessing alcohol in a public place’ (young people generally have become demonised in the licensing process – the existence of young people in the vicinity of licensed premises being enough to raise concerns); reduced the definition of ‘persistently selling alcohol to children’ from three to two sales (without any attempt to gauge the effectiveness of the earlier measure); and increased police powers to confiscate alcohol from young people.

Most significantly the Act introduced a number of mandatory conditions that must be placed on all new licences and have been added to all existing licences. The conditions are a ban on irresponsible drink promotions (so far unenforceable due to problems of definition) and the pouring of alcohol directly into a person’s mouth (known as the ‘dentist chair’); the requirement for premises to offer free tap water; the introduction of an age verification policy; and the provision of glasses which allow customers to purchase small measures of alcohol.

Next was the Crime and Security Act 2010 which introduced power for licensing authorities to impose a curfew on alcohol sales between 0300 and 0600 hours in a given geographical area where there are alcohol-related problems. There is as yet no date for the commencement of these ‘Early Morning Restriction Orders’ but wider powers to restrict hours are now under consideration by the government.

The election of a new coalition government has resulted in a reappraisal of the 2003 Act and the measures taken by the previous administration which aimed to address alcohol-related problems, particularly those of crime and disorder. The actions of the previous administration were often hastily introduced, ill-thought-out and aimed more at securing political capital rather than a considered approach to the issue of alcohol-related crime and disorder. In a move to recognise the association between alcohol, crime and disorder the coalition has moved responsibility for alcohol licensing from the DCMS back to the Home Office. Further, and not surprisingly, the new administration has been quick to point out the failings of its predecessor which have resulted in a hugely complicated web of measures about which little or nothing is known as to their effectiveness.

However, any hope of a more considered and research based approach by the coalition seem unlikely to be fulfilled. This is evidenced by the hastily announced consultation ‘Rebalancing the Licensing Act’ (Home Office 2010b). Contrary to the government code of practice, that recommends at least a 12 week consultation period with a longer timescale if feasible and sensible, only six weeks were allowed for responses. To make matters worse the consultation period ran from 28 July to 8 September; traditionally a holiday period. The politically driven motives of the previous administration seem to have been adopted by the coalition. It is intended that new measures will be included in the Police Reform and Social Responsibility Bill planned for autumn 2010.

The aim of the consultation is to gather views on (among other things): overhauling the Licensing Act to give licensing authorities much stronger powers to remove licences from, or refuse to grant licences to, premises that are causing problems; scrapping alcohol disorder zones and the mandatory conditions (within months of them being introduced) allowing councils and the police permanently to shut down any shop or bar that is repeatedly selling alcohol to children; doubling the maximum fine for those caught selling alcohol to minors to £20,000; allowing local councils to charge more for late-night licences, which will help pay for additional policing; and banning the sale of alcohol below cost price. Announcing the planned bill, the Home Secretary said that ‘this bill will ensure police have power to tackle anti-social behaviour …and…tackle the drink-fuelled violence and disorder which blights many of our communities’.10 A view welcomed by the president of the Association of Chief Police Officers who commented that: ‘Excessive alcohol use is closely linked with violence and anti-social behaviour and places huge demands on the service in and around city centres in policing the night-time economy’.11
6. Conclusion

Anti-social behaviour, crime and disorder have long been linked with the availability of alcohol. The last 600 years have seen licensing laws used to control the supply of alcohol in England and Wales. Licensing provisions have been tightened and relaxed, swinging back and forth between liberalisation and constraint, in line with prevailing public opinion and government policy. The latest period of liberalisation gained momentum after the Second World War. By the end of the twentieth century the number of licensed premises had expanded dramatically, premises were no longer required to close in the afternoons and far more late night/early morning licences had been granted. The gaps left in towns and city centres, as companies such as banks and building societies relocated, were filled by clubs and bars. Large capacity venues, often offering alcohol promotions and with strong marketing strategies, replaced small local public houses. Off-licence numbers also increased and in a time of economic boom there was cash available to go out and have fun. In the words of the Martini advertisement, alcohol had become available ‘any time, any place, anywhere’.

Liberalising phases also seem to bring with them changes in drinking cultures, which once established take some time to reverse. From the ‘gin craze’ of the eighteenth century to the so-called binge drinking culture of today. As there appear to be several definitions of binge drinking it has been suggested that the term ‘extreme drinking’ is used instead. This seems counter-productive as it appears to recognise that for some young people excessive drinking has become something of an extreme sport played out at weekends in town and city centres around the country – and also exported to towns and holiday resorts overseas.

Central to the increase in the number of licensed premises was the removal of need as a criterion to be considered in applications for new licences. There was no consultation or public debate on the scrapping of need. Its removal was quietly recommended by a Home Office working group on licence transfers and then effectively ditched in an attempt to retain licensing jurisdiction for the magistrates’ courts. Cumulative impact area policies perform a similar role and the latest government consultation considers simplifying such policies which may well see them multiply rapidly.

The perceived wisdom on the part of the government, media and many criminal justice agencies seems to be that there is a simple causal link between alcohol, crime and disorder. Further, that the problems are caused by a minority of drinkers and licensed premises that behave irresponsibly. There appears to be little or no reliable evidence base for these assumptions. Nevertheless, responses have cascaded down over the past five years in a haphazard, irrational and increasingly complex fashion. Enforcement agencies and licensing authorities face being overwhelmed by the relentless welter of measures, reports and guidelines being produced. It is hard not to see the majority of these responses as populist rather than realistic responses in the absence of a reasoned debate on the relationship between alcohol, crime and disorder. A debate which is long overdue.

References


House of Commons (1833) *Report of Select Committee of Commons on Sale of Beer*, (140) XV.1.


