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Historical Development of Legal Versus Illegal Games in Spain until the Creation of the Lottery

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Abstract

This article discusses the evolution of the game from antiquity to the creation of the Lottery in Spain, interpreting from the field and mercantilist chrematistic, the result of a contractual relationship between the parties involved, which results in the cases of legality to a tax levied by the state. These assumptions make the game a vital economic activity, which was subject to the law. Civil law regarded the game as a random and commutative contract, while the punitive law was within the legal system, the most extensively dealt with the game, considering it a harmful activity that produced unintended consequences for humans and society.

Keywords: Game lawful, illegal gambling, regulation, Iberian Peninsula, Spain.

1. Introduction

In the Iberian peninsula, the Romans spread their culture and customs, among which was the performance of games in several ways, but especially the dice, but playing odd / even with the fingers, or bet on cock fights and chariot races (Fontbona, 2008).

Roman law distinguished between lawful self bet sports games, the others made in gaming, which by its illegality were subject to various sanctions. The legality and illegality of the bet is intimately related to the game. The Game Laws were dictated in terms of moral, social and economic, punishing more, than the contract itself, the disruption of public order, economic and moral provoking game activities.

The lawyer Paulo banned any game in Rome and the Roman law, in its evolution followed the same criteria to allow betting money on games that develop physical strength, prohibited in the rest of gaming. The book of the Digest XI in title V on how to claim on various subjects, among them is the gaming repression occurred indirectly by failing to demand action for crimes committed in the house where they were playing.

Justinian drafted legislation aimed at alleviating the enforcement of illegal gambling through various measures contained in the code, Law 1 and 2, title XLIII, XXX, and the Law, which states the

seizure of the assets of the players together the fines imposed on owners of gambling houses were intended for public works.

The rules of the game established by the Roman law and, specially Novel XXIII, Justinian came to set the content-gaming in the headings of Alfonso X the wise (year 1265). In this regard, game I, in laws XXXIV, title V, VI and LVII, ban was imposed to the clergy not only they were not allowed to play also to witness the games or be with the players, in order to that the prelates should not go out of the tranquility and peace that they needed for their mission required, they were unable to take part or attend as spectators at bullfights, craps, balls, etc,

The same indirect ban was contained in game VII, especially in act VI, title XIV, which deprived any action to the owners of the gambling house. In addition to prohibiting the Game to the clergy directly because they should be example for the rest of society, imposing to them a penalty for disobedience after warned, it was to be disqualified from labor for three years, according to part I, act LVII, title V, and XXXIV Act, title VI. They were also deprived of his labor for three months, if they were hunting any beast or fowl. In the doctrine of the Councils are also these restrictions increasing penalties and excommunicated clerics playing (Lopez Estrada, 1992).

The influence of the Church in the rules of the time led to the prohibition of all kind of games, including the Olympics, until the eighteenth century, when they again tendered as set-sport. The doctrine of the Councils is a living example of the increased penalties, including excommunication for clergy who play the game. These punishments have a subjective approach; because they were addressed to specific individuals rather than focusing on different sceneries of game activities.

2. The Order of the Gambling Houses

This ordinance, enacted in 1314 by King Alfonso X, who is attributed to the Master Roland, indirectly develops the prohibition of the Game, as stated in the book The Spanish code, concordats and annotated, published in 1847. This is a regulation that filled a gap in legislation in a matter of litigation and gambling houses could not give permission to the mayors to judge on these grounds, given the increase fighting and deaths from the game. Its historical interest is focused on being the first computer-composed of 44 laws, which regulated without prohibiting the game that posed a rent to the Crown.

The purpose of this legislation was to establish order and peace in Tafurerias (houses for the game). owned by the king, and with the city authorized to do so, they were leased on behalf of the city or place that had the privilege of having them. In addition to contemplating how to make the gambling houses leases, it states that the mayors should judge all disputes that occurred inside and outside of them, also for applying the penalties for gamblers (Todd, 1983).

This regulation is made when were the permitted craps, how to play and the money that each player coulde bet depending on the type of game played. In the first law was punished, among others, blasphemers and cheats with very severe penalities. However, the penalties were based on social class of the person who violated the law, differentiating the hidalgo or esquire rich man and gambler. The fines were high, whipping repeat offenders, and if it were a third time, two fingers were cut off tongue and finger. Applying higher penalties for blasphemy, cursing, Moors and Jews, to which the goods were confiscated and they were locked up in prision, This ordenance in order to avoid scams, dealt with gambling debts, the rightand responsibility of the butchers, etc.

This order submitted to the higher social classes than the rest barely even having committed the same offense. Act XXV, left the clergy deprived of their jurisdiction, so it could not be tried by the Church, but it had to go through the same trial as the gamblers.

Game authorization was intended to become an income for the Crown (Colmeiro, 1876: 516) The game resulted in income taxes result from urban areas, which were held by the king to the sixteenth century, since the ban gambling houses, moral and religious grounds, it was awarded as compensation to the cities, the fines imposed game on.

The Order of the gambling houses had a short duration, approximately half a century, since its objectives were not met and increased social unrest that led to the closure by subsequent regulations the prohibitive gambling houses. However, the game was valued for its tax basis, rather than the political-criminal, as recorded Quintano Ripollés in the word "illegal gambling", the New Encyclopedia Seix.

The tolerance of the laws of Alfonso X, with respect to the Games, they had a short duration, since Alfonso XI returned to ban it, circa 1326, not only to punish cheaters, but also to players through the imposition of financial penalties, a change was given in the form of lease unscrupulous middlemen who all they did is to encourage law lessens and social disorder, so it was necessary to return to the permissiveness of the previous legislation.

3. New Brand New Collection

The New Collection is a legal body sanction, officially in March 14, 1567 by Philip II, containing the Laws of Toro (1505), the sorting of Montalvo (1484), and the ordering of Alcalá (1348). A law enacted by King Alfonso XI, in the order of Alcalá, established a ban on the military to play craps tables and during the war, it was fined 600 maravedis, to be paid to the sheriff, and in otherwise, it must comply with a sentence of thirty days and return the gains, as stated in Act I, book VIII, title VII, the new brand collection. In addition, Act I, Chapter XXXI, it is ordered that the offenders being whipped, they were forced to say, “Lord God and Santa Maria in you I trust and believe”.

In the law XLI establishes three different kinds of forms of oath, according to the religion of offending: one for Christians, another for the Jews, and the other to the Moors. It also prohibited the knights or squires of free men were playing with weapons, but not those of his slaves.

The new collection was expanded in (1895) which contained, title XXIII First Law, promulgated by Juan I (1387), and the Catholic Kings (1476), in order to establish the prohibition of the dice games and playing cards, by penalizing the violators of it. The second act empowered the officers to punish the owners of gambling houses, taking care to prevent the existence of boards. In Act III, King Juan II ordered that some cities and towns were left with fines imposed on players as compensation to the damage, they caused the closure of the gambling houses and in consequent disappear the collection of the income that generate the boards. These fines were shared, in part by the people who betrayed to achieve an effective implementation of laws.

In the Pragmatic given in Toledo by the Catholic Monarchs (1480), which reaffirmed the orders in the first three laws above, but people continued violating of the precepts and commonly practiced the game, including in some domains, by ordering of the owner of the place. Adding to the penalties imposed on the players, the penalty of excommunication for the lords of the places they were negligent in implementing their mandates, and even they were deprived of their labors and they had granted kings.

In Act V sets out the procedural rules laid down by the Catholic Monarchs in 1599.The state the way to collect the penalties for prohibited Games and land lords who would do the same boards or ten licenses; it deprives them of validity, and giving action to the courts to enforce penalties. In 1515, the kings Ferdinand and Juana, by Pragmatic gave Burgos Law VI, which includes the above prohibitions, and also the manufacture and sale of the dice, extending the penalty in these cases, two years of exile from their kingdom. However, they introduced the confiscation of the homes was sold craps or hosts the games which will become the property of their house and treasury. Finally, the justice were punished with the loss of their jobs when they do not follow the laws.

In Act VII (1528), Kings Don Carlos and Doña Juana established that there was not obligation through contracts of the game, when credits were done without justices, and they would not execute the sentences imposed in these matters, they ignoring the obligations, promises, or writes performed on the game. It sets a deadline of two months to denounce those who played in towns and cities, and reiterated

the permission of those gambling games that consisted of betting things to eat when its value was not more than two real.

The limitation of the amount that was played it was established more generally in Law VIII, which prohibits playing more than 30 ducats a day. The penalties for the sleepers and the sureties were cash, raising the fine for repeat offenders, adding the penalty of banishment, which could have a duration of eight years if relapsed a third time. On the other hand, it invalidated the obligations and writings, aimed at the game.

These laws provide innovations with respect to previous regulations of the Game, which are as follows:

1) The laws contained in the Novisima collection are not explicitly some moral judgments as in previous legislation.
2) It is a regulation that applies the principle of equality, through the disappearance of discrimination on grounds of religion, race and social class, who had maintained until then.
3) The Game is considered as crime and punishment are established that become body to become cash. At the same time, the detention becomes an alternative, and the exile appears as an additional penalty.

Act XI, given by Philip II in 1568, develops new penalties because of discriminatory social class, and those who are violating the law:

"(...) If this gentleman or nobleman, a penalty of five years of exile in our kingdoms, and two hundred ducats ... if they were of lesser status publicly given one hundred lashes and serve the said five years in the galleys of our galley to the kingdom and without pay ".

The houses which were confiscated from playing, and it proceed to their distribution in the manner prescribed by law, as established by the Act VI of this title. The Justices do not work diligently and obey the orders imposed were punished with the loss of their offices and disqualification to others.

The repressive policies of Philip II game, it is clear in his Pragmatic enacted in the Courts of Madrid (1575), by which increased penalties for those apprehended in Forbidden Games, including in these the Carteta Game, In addition, the repetition of the prohibited lost if the player was more than fourteen years. Even winning the gain should return entirely, adding as much, which should not exceed 50 ducats.

The Game is banned directly, appearing the penalty, as the subjects who performed. For example, to prevent them from disrupting the work, were subject to punishment those officers and laborers in any trade you were playing in working days, regardless of the amount and the permissibility or otherwise of these Games. Other subjects were subjected to enhanced penalties, such as butchers of the Games, which were subjected to exile for two years. In this regard, the order made by the Council in 1591 ordered the mayor and deputy prison court do not let playing any of those prohibited games, playing cards or it should give nor room to play, under penalty perpetual deprivation of their offices, leaving the special mayors in charge of compliance.

At the same time it increased the number of games banned, also appeared to allow conditions, they were that they could not play on credit, or earnings on credits, charge no rights or interests. The fines were imposed for failure to observe these prohibitions were divided in thirds between the house, the judge and the defendant.

King Felipe II, in Monternos (1586), and Aranjuez (1593), extended all the provisions laws, and applying the same penalties for a number of dice and cards games, according to an exhaustive list of them. Grieving, too, to those who "have, do, sell or bring" the tools to play the games prohibited. These laws are accompanied by Royal Decrees and Resolutions Royal specific cases where disputes arose by reason of the Game, in inns of court bailiffs or military.

The extensive regulations developed by Felipe II are the most significant characteristics:

1) It violates the principle of equality, to discriminate with regard to the imposition of penalties, depending on the social class of those violating the law.

2) The reappearance of penalties based on corporal punishment, as were the whipping, the galleys, etc... The consolidation of financial penalties, and the tightening of the penal system, which imposed penalties such as imprisonment and exile.
3) Appear moralizing measures, protecting the work through the prohibition of any type of day laborers and Game official working days.
4) Increase the number of games prohibited and the scope of application of penalties, both subjectively and objectively.

In summary, this legislation penalizes the game more intense than before, but with the same inefficiency that arises from the fact that they continue playing in all realms. The gambling houses, pillage, the Games and the rogue at the time, are reflected in the novels and literary works.

The repeal of any privileged status was available in Law XIV, within the Laws of the newest Collection, which was given by several kings, among them were: Felipe V (Act 1710), Luis I (Act 1724); Fernando VI (Royal Order of 1756), and Carlos III (Royal Order of 1764).In this rule any person infringing the prohibition Flare Games, Luck and Chance was subject to regular courts, exist without privileges.

Despite the disappearance of privileged status, the criminal justice system remained in effect from the Laws of Felipe II, which imposed the penalty in money and banishment to the noble, and of lower social class at scourging and galleys. In other respects there is a reference to the penalties established in the previous legislation. The game is considered a vice, an action harmful to the public cause, referring for the first time in a law, expressly, the importance attached to the common good of the state.

4. The Creation of the Lottery and Pragmatics of Carlos III

The Lottery had its origin at the time of the Roman emperors, being created because of the holidays called "saturnales", which threw the people some tablets contained in the registration of various gifts. In the sixteenth century, established the first Lottery–Charities in Mechelen, on September 13, 1519, to serve the state of penury in which they were the Church of St. Pedro and the Brother hood of St. Jorge. Later, Jacobo I of England, in 1612, created a lottery for prizes worth £ 30,000. The Lottery was established in France of Luis XIV (1655), through the donation of three million free tickets to the ladies of his court. In Germany they came to offer prize of inestimable value, comprising an entire town, 29 villages, a vast palace, 10,000 hectares of forest and 1,000 of arable land, and two factories. In Italy, practiced a form of lottery known as "Lotto", which was invented in Genoa by Benito Gentile.

King Carlos III, by decree of September 30, 1763, created in the town of Madrid, a lottery or Benefit for hospitals, hospices and other charitable works. This Decree regulates the National Lottery, which has since been the monopoly of the state (Ramos Palencia,2010). Act XVIII, which was prior to the seventeenth of the newest Collection, prohibited by resolution of Carlos III (1774), the establishment of foreign lotteries in Spain and any other lottery that was not laid down by himself. This prohibition was established to avoid the output of large amounts of money for foreign lotteries.

On the Pragmatics of October 6, 1771, appears to Act XV, given by Carlos III, which covers the prohibitions of the Royal orders, and Decrees in force in their kingdoms, and some cars and sides of good governance. It is also a list of Gaming prohibited, even forbidding others not included. It also contains a statement on how to play games when it was allowed, such as:

"Bank or pharaoh, Bacete, wallet, bank fails, lansquenet, stop, thirties and forties, chub, flower, fifteen, thirty-one raises, or other any of Cards that are of chance, or to play at stake, even of another kind, and will not specified herein as well birbis Games, geese and Auca, dice, tables, hazards and Czech, roll, trompico stick or instrument of bone, wood or metal, or otherwise any have meetings, hazards or repairs, as well as that of tobacco, cups thimbles, nuts, convolvulus, download the donkey, and others either of chance, but not be marked with their names ".

The penalties were diverse, subjectively imposing the same amount, so that the nobles, or employees in any civil or military public office, imposed penalties are higher than people of lower status to "honest trade."Also took into account the social class of the owners of the houses where they were playing, but the punishment, them, they applied bent.

The greatest punishment is imposed on the lazy players, unskilled, roots and occupation, the gamblers and crooks. In these cases, in addition to the fines established by by nobles were punished with five years' imprisonment, and commoners were allocated to stocks. It also applied the penalty of deprivation of liberty for the people without money to pay penalties.The money raised through fines was distributed in thirds between the House, the judge and the complainant, and if no such and was given to the officers and officers of justice which they have been apprehended.

The most important features of the Pragmatic of Carlos III are:

1) Reorganize the previous laws relating to game, except with regard to physical penalties imposed by Philip II, which disappear for good.
2) The level of penalties applied depending on the social class he belonged to the offender, but in the opposite direction as in previous laws had applied, so that the upper classes were greater financial penalties applied to the classes of lower rank, as were the workers, for instance.
3) Being a gambler, lazy or have the game for a living became aggravated when applying penalties.
4) Gone and disappear is a privileged status, as it was the case of ecclesiastical and military, which was subject to the ordinary courts for offenses related to the Game.

In Book XII, Chapter XXIV, there are three laws relating to the sweep stakes. While Felipe II established the first, an absolute ban luck and Raffles, the other two Acts of Felipe V(1716), and Carlos III (1787), banned some raffles, while those that legalized made with real license. This exception was intended to prevent public disorder committed usury, etc. That could be generated during the conduct of the raffles.

In these latest laws and regulations leads to a trend of tolerance that was motivated by the fact that the game represented a gain for the state, and in the case of the possibility of exceptions Raffles ban if the license or permit obtained real. This tolerance repression moved to taxation and police, this was proof of the Criminal Code of 1822, which omitted the subject of the Game, with the exception of the type of cheating, trapping holding raffles without government permission or breach of its rules, characteristic of the tax offense.

5. Conclusions

The Game has been the subject of legislative regulation from the ancient Greek and Roman civilizations, which began to distinguish between lawful and unlawful games, so that the economic and entertainment that was sought by the players in turn spawned manypublic order problems. The rules laid down by Justinian Roman law served as a model for developing a Game regulations contained in parts of Alfonso X the Wise in the thirteenth century, forbidding the clergy presence during their implementation, development, considering that it should set an example to the rest of mortals.

The organization of the XIV century the gambling houses filled a legislative gap regarding litigation relating to the Game of dice and the gambling houses, but it was a regulation and not a ban, because it was in the best interests of the Crown to obtain an income derived from this activity. In the sixteenth century New Collection contains a law promulgated by Alfonso XI, who established the military ban on playing dice and tables during the war. The brand new collection, in the nineteenth century contained some laws directly prohibiting the celebration of some games, although it did not make explicit moralizing value as in previous legislation, such as dice and cards, and established a series of penalties for offenders.

Felipe II, in the sixteenth century, extended the punishment to all who make, sell or provide tools for practicing Forbidden Games, having noted that the Laws be contrary to the principle of equality, because discrimination is established by the imposition of penalties function of social class offenders. Also appeared on corporal punishment sentences, developed standards to protect the moralizing work of the idleness of laborers or official and, finally it increased the number of games allowed.

The Pragmatic of Carlos III, in the eighteenth century, contained a list of prohibited games; It is a very extensive case of the penalties imposed on offenders. Although, the largest penalties imposed to lazy players, unskilled roots, people without an occupation, the gamblers and crooks. However, far away from these prohibitions, they created in 1763. the Lottery or Benefit as a matter of social work for hospitals, hospices and other charitable works. It was obvious he had a purely economic objective that sought an improvement for the public purse, making monopoly.

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