

are, we think, outside our province. Nor are they, in our view, within the province of the State. History is redolent with examples of the unwisdom of the State attempting to adopt repressive or coercive measures in respect of matters of private conduct in opposition to the personal convictions of numerous sections of the community. Whether, therefore, betting is unethical and a moral wrong, or a mere innocent pastime, and whether it is an irrepressible primary human instinct, as was contended, or a restrainable complex impulse compounded in different individuals of different degrees of the desire for adventure, excitement, and material gain, it must, we think, be regarded as a propensity to the exercise of which, at least in some degree or to some extent, the majority of the people in the country give their approbation. And it is from that point of view that we conclude that the duty of the State must be considered.

SECTION 3.—DUTY OF THE STATE IN RESPECT OF BETTING

54. The question thus arises as to what the attitude of the State should be in relation to a widespread, deeply-rooted, very old, and widely approbated propensity. Historically, the State has never interfered with the liberty of private individuals to gamble between themselves. On the contrary, it has scrupulously avoided doing so. Of this the language of Sir Alexander Cockburn in introducing the Betting Bill into the English House of Commons in 1853 is illustrative. In the course of his speech he, in effect, referred to the disinclination which was felt against interfering with the right of individuals to gamble between themselves in connection with what he described as “the great national sport of horse racing.” The object of the Bill, he said, was to suppress betting-houses without interfering with that legitimate species of betting. As a matter of history, therefore, the right of individuals to gamble between themselves has, in practice, been put outside the ambit of State interference. That form of interference might, in any event, prove insupportable and it would certainly prove unenforceable. In the result, therefore, the State is left solely to interfere with those facilities which provide a basis for organized or professional gambling, and its jurisdiction with respect to that form of gambling is necessarily limited to restriction or prohibition.

55. We apprehend that the State cannot, with propriety, interfere on a basis which is purely ethical. That view finds support in the opinions expressed by the British Royal Commission on Lotteries and Betting of 1932, as well as in the opinions expressed by the South Australian Royal Commission on Betting of 1933. In both the conception is implicit that the field of ethics is not co-extensive with the criminal law and that, just as there are many forms of conduct which are generally considered to be morally wrong or reprehensible which are not within the ambit of the