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THE EVOLUTION OF GAMBLING LAWS IN AUSTRALIA

JAN MCMILLEN* & WILLIAM R. EADINGTON**

It is often argued that gambling has had an unusually crucial and distinctive place in Australia's national culture; a reputation enthusiastically promoted by Australians themselves in popular literature¹ and academic studies². The relatively liberal character of Australian gambling legislation, more often than not, is proudly portrayed as a reflection of an essentially Australian way of life: a lingering inheritance of the people's convict origins, their willingness to "give it a go," and a

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1. See, e.g., J. HOLLEDGE, *THE GREAT AUSTRALIAN GAMBLE* (1986); F. HARDY, *THE FOUR LEGGED LOTTERY* (1958).

2. Dunstan argues:

[T]he Australian obsession for gambling is rooted and reflected in Australian history. The Australian colonies were populated by immigrants, young people and escapists who gambled to come to Australia in the first place. Their passionate devotion to racing in the 1870's, 1880's and 1890's is a reflection of their gambling spirit.

G. Caldwell, *The Gambling Australian*, in *SOCIAL CHANGE IN AUSTRALIA: READINGS IN SOCIOLOGY 14* (D. Edgar ed. 1974)

Cup fever was not necessarily connected with horsemanship, nor was it confined to people who actually attended the race. "The popularity of the Melbourne Cup" [Inglis quotes R.E.N. Twopeny from *Town Life in Australia*], 'is largely due to its being the great gambling event of the year. . . Everybody backs his fancy, if only because, unless he is a strict methodist, it would be peculiar not to do so.'

K.S. INGLIS, *THE AUSTRALIAN COLONISTS* 211 (1974).

An integral part of the contemporary Australian self image is the myth of the Australian male as a gambler, a high risk taker on the remotest and riskiest fringe of the urban frontier. Such a myth serves to preserve a romantic link with a more venturesome past. The modern Australian male . . . still gambles and is also very much like the rugged Australian of old.

A.W. McCoy, *Sport as Modern Mythology: SP Bookmaking in New South Wales 1920-1979*, in *SPORT: MONEY MORALITY AND THE MEDIA 34* (R. Cashman, ed. n.d.). See also J. O'Hara, *Australian Gambling Tradition*, in *SPORT: MONEY MORALITY AND THE MEDIA*, at 68-85.

There is a wealth of testimony to the passion for gambling. . . . "To such excess was the pursuit of gambling carried among the convicts that some have been known, after losing money, provisions, and all their clothing, to have staked their cloaths upon their wretched backs, standing in the midst of their associates naked. . . ."

R. WARD, *THE AUSTRALIAN LEGEND* 59 (1958).

peculiarly Australian commitment to fair play. However, behind the assumption that widespread gambling has always been a distinguishing feature of Australian society and a great social leveler, there are historical questions which may be raised about the precise nature of Australian gambling laws and the role the government has played in their implementations.

Australians have always gambled—legally and illegally—and, as with other countries, it is an intriguing exercise to try to determine why some forms of gambling have become institutionalized and respectable at certain points in time while others have not. Many commentators have remarked on the key role played by Commonwealth and state governments in organizing Australian gambling and providing popular gambling facilities.³ The questions that have often been raised about gambling in other countries, especially the United States, (and clearly many similarities can be found in the evolutionary pattern of commercial gambling between Australia and other countries)⁴ in-

3. For an excellent collection of addresses, essays, and lectures indicative of many gambling commentators, see generally *GAMBLING IN AUSTRALIA* (G. Caldwell, B. Haig, M. Dickerson & L. Sylvan, eds. 1985); see also J. McMillen, *Winners and Losers: Dilemmas of Gambling Policies*, to be published at 8 *LABOR FORUM* 17 (1986).

4.

From colonial times to the Great Depression, gambling remained a social outcast while recording a varied and complicated legal history. During this period American mores were remarkably stable: to gamble was an asocial act.

Commercial gambling is a relatively recent development. The immediate antecedents of modern gambling industries are the nineteenth century private lottery companies and the organization of individual gambler-entrepreneurs.

Since the inauguration of the first modern State lottery in 1963, and with accelerating speed in the last decade, spontaneous play at gambling games has increasingly conformed to the programmed experiences provided by America's newest leisure institution.

The revenue needs of the States were thus the primary stimulus for establishing the two industries [lotteries and horseracing] that were to dominate legal American commercial gambling for nearly half a century.

V. ABT, J. F. SMITH & E. M. CHRISTIANSEN, *THE BUSINESS OF RISK* 153-55 (1985) [hereinafter *THE BUSINESS OF RISK*].

Both the United States and Australia have a legacy of illegal gambling which has, at one time or another, posed a serious law enforcement problem and become a major cause of political corruption. In both countries, legal gambling has expanded because of the popularity of gambling among the general public. Furthermore, public policy in both countries has attempted to establish regulatory structures which would minimize or mitigate the negative social effects associated with gambling so that the generally positive economic effects could be enjoyed and exploited with a more or less clear conscience. W. Eadington, *Trends in the Legalization of Gambling in the 1980's and the Implications for Australia*, in *GAMBLING IN THE 80'S: PROCEEDINGS OF THE INAUGURAL CONFERENCE OF THE NATIONAL ASSOCIATION FOR GAMBLING STUDIES*, No. 18, at 2 (J. McMillen ed. 1986 [hereinafter *GAMBLING IN THE 80'S*]).

clude: Why has popular gambling been legalized to a greater extent in Australia than in other countries with a common British heritage, such as Britain, Canada and the United States? Why does the government actively organize and operate some major gambling facilities in Australia, while in Britain the government is confined predominantly to a "reactive" regulatory role? Why have some forms of gambling been institutionalized at certain times and others prohibited?

Many studies of Australian gambling start from the basic assumption that it is the role of government to determine what legal gambling is, and to define and regulate its operation. This is done to ensure that gambling legislation is "fair" and equitable. Within Australia, however, gambling laws and institutions have shown marked variations from state to state in long-term trends, organizational characteristics, and the considerations which generate shifts in policies. This paper draws attention to some of the more contested and discriminatory aspects of Australian gambling laws which many analysts avoid: the moral and social objections that have been levelled at popular gambling; the changing criteria which have been considered in determining the legality of specific types of gambling and the way they are organized; the failure of regulatory authorities to control the defiant determination of Australians to gamble on gambling forms which have particular cultural significance, notably SP (off-course) betting and two-up.⁵ This paper further examines some of the economic and political issues somewhat unique to Australia that have fostered the development of Australian gambling in its particular direction.

To gain an understanding of the changes which have occurred in Australian gambling over the past two hundred years, the legislation which influenced these changes, and the differences in the gambling patterns and institutions which have emerged, it is necessary to examine the historical connections between gambling and the specific social and institutional framework within which it has evolved.⁶ This pa-

5. In Australia, off-course betting is commonly termed "SP betting," for starting price betting. SP bookmakers are able to offer more favorable odds to the punters than does the tote because, as illegal operators, they avoid taxation. "Two-up" is a traditional Australian game, dating back to the late eighteenth century. It is played by flipping ("spinning") two coins from a paddle ("kip"). The game has had considerable popularity over the years as an illegal game played in "schools," which are analogous to floating crap games.

6. "Gambling has also been romanticised. . . . Romanticisation occurred in Australian literature as a part of a wider process of describing the natural self-image; gambling was seen as an expression of egalitarianism with chance as the equalizer." O'Hara, *supra*

per contends that gambling laws have not only played an increasingly important role in organizing Australian popular culture from the nineteenth century to the present, but that they have also helped to shape and sustain the country's social structure and the relationships and divisions within it.

Evidence for this argument is drawn from four case studies: horseracing, lotteries, poker machines, and casino gaming. These areas were chosen because they cut across the most important areas of legal gambling in Australia and because they are the most common objects of public debate and government legislation. Historically, these have been the most significant forms of popular gambling among Australians, and therefore allow fruitful comparisons with the evolution of gambling legislation in other countries. They also provide examples which expose the ways that Australian gambling laws and practices have been shaped by, and in turn have reshaped conditions in Australian society during times of social stress.

An Historical Overview

Some general patterns should be identified before looking at specific cases of Australian gambling legislation. This is best done by taking a panoramic view of the changing "face" of Australian gambling in the nineteenth and twentieth centuries. Historical trends in Britain, as the host country of Australia's development, had an obvious relevance for the evolving shape of Australian gambling. There have been some important areas of Australian gambling, particularly in terms of laws and their enforcement, which have been very similar in substance to British developments. In the two centuries since the first Australian settlement in 1788, an important but slowly diminishing British influence has shaped Australia's political and legal institutions, as well as the approach and public debates dealing with gambling.

note 2, at 80-81.

The second type of deprivation is more sociological. The fierce economic and status competition of the day-to-day world produces few winners and many losers. The losers, whose direct access to achievement is blocked by lack of skills, education, contacts and wealth, turn to other forms of competition (such as gambling) which they feel will offer the greater chance of success.

Both Bloch and Caillois see gambling as providing an alternative opportunity to gain excitement and success.

Caldwell, *supra* note 2, at 18-19.

"Gambling, profanity and drunkenness tend to flourish in any frontier society where there are few women but, as we have seen, these vices were indulged in the more readily because they were regarded as characteristic of the old colonial hands." WARD, *supra* note 2, at 148.

In Australia, as in Britain, the regulation of popular gambling has been one of many strategies by which governments have sought to reconstruct public morality.⁷ In the nineteenth century, Australian development of gambling laws and practices was conditioned by social and political values consistent with the Victorian moral order. In Australia, however, the class basis of popular gambling practices and organization at that time was also related to the particular conditions of Australia's colonization and settlement.⁸

By the end of the nineteenth century, gambling in both Britain and Australia was a popular recreation covering a multitude of practices ranging from informal and localized games of chance and card-playing to the rapidly expanding practice of betting on sporting events such as horseracing and football. The trend to more institutional and commercial sports as popular leisure activities was matched by a gradual expansion of commercial gambling facilities. These developments, however, were limited by recurring political debates about the morality of gambling. These debates considered many of the issues concerned with the maintenance of social order and class distinctions.⁹

Until the late nineteenth century, the values of the colonial "gentry" who directed Australia's initial growth coincided with those of British ruling classes. Because social and economic development was slow, these values—based principally on defense of property and social privilege—were entrenched in the cultural and legal-political structures of colonial society. Gambling was widespread, particularly among the large Irish working class and Asian populations, but it was condemned by authorities as anti-social behavior, a violation of the work ethic needed for economic growth and of moral values which were central to colonial settlement.¹⁰

7. See Dixon, "Class Law": *The Street Betting Act of 1906*, 8 INT'L J. SOC. L. 101 (1980) [hereinafter Dixon, 1980]; Dixon, *The State and Gambling: Developments in the Legal Control of Gambling, 1867-1923*, in 7 THE GAMBLING PAPERS: PROCEEDINGS OF THE FIFTH NATIONAL CONFERENCE ON GAMBLING AND RISK-TAKING 1, reprinted in BUR. BUS. & ECO. RES., U. NEV. RENO (W. Eadington ed. 1982) [hereinafter Dixon, 1982]; Dixon, *Illegal Gambling and Histories of Policing in Britain*, in 1 THE GAMBLING STUDIES: PROCEEDINGS OF THE SIXTH NATIONAL CONFERENCE ON GAMBLING AND RISK-TAKING 308, reprinted in BUR. BUS. & ECO. RES., U. NEV. RENO (W. Eadington ed. 1985) [hereinafter Dixon, 1985].

8. A nineteenth century commentator observed that "the gambling spirit is produced by our special circumstances. . . ." GAMBLING IN AUSTRALIA, *supra* note 3, at 7.

9. See generally *supra* note 7.

10. As one writer noted:

The new concept of industrial labor discipline drew a firm distinction between work and leisure. It was concerned with efficiency and productivity in work time and saw recreation or leisure as unproductive idleness and consequently a drain on the national economy. As such, leisure was seen as unpatriotic in a society

By the 1880's, Australia was experiencing accelerated economic and social growth which placed pressure on the values, conventions and structures established over the preceding one hundred years. It was during this important phase in Australia's historical development that the crucial lasting social structures, traditions and relationships peculiar to the process of gambling law-making in Australia began to challenge and reshape existing British influences.

By the 1900's, many aspects of Australian gambling had become the object of political (*i.e.*, governmental, religious, and reformist) intervention and regulation to unite the respectable middle class and the working class elite against the disreputable gambling activities of the poor and the gambling extravagances of the rich. In the first half of the twentieth century, the general thrust of the moral and legal arguments about gambling in Britain and Australia were not so much about whether gambling should be permitted or not, as they were in the United States. The debates, rather, were more concerned about whether the legalization of gambling would induce betting by social groups which otherwise might not gamble, and about practical issues such as the particular location, organization and regulation of legal gambling facilities. On the frequent occasions when public debate over gambling became a crucial issue in local politics, for example, it was the usual practice for the government to appoint a commission of inquiry to investigate the moral and social acceptability, economic and social implications, and perceived problems of control and regulation of different forms of gambling in that specific situation.¹¹ This practice still continues.¹²

Throughout the first half of the twentieth century, gambling was increasingly construed as a problem that should be the object of reme-

which was beginning to view industrial progress as the supreme symbol of civilization and the proof of British superiority.

J. O'Hara, *Getting a Stake: Gambling in Early Colonial Australia*, in GAMBLING IN THE 80's, *supra* note 4, at 5-6. "It is clear that his [the Reverend Marsden] main complaint against gaming and betting was their promotion of a spirit of idleness." *Id.* at 18.

11. Reports spurred on by public debate in the early 1900's, *e.g.*, SOUTH AUSTRALIA REPORT ON THE ROYAL COMMISSION ON LOTTERIES (Adelaide 1936); THE REPORT OF THE ROYAL COMMISSION OF INQUIRY INTO THE TOTALIZATOR (New South Wales 1912); and THE ROYAL INQUIRY INTO THE TOTALIZER, (New South Wales 1912), continue to issue.

12. See, *e.g.*, THE REPORT OF THE INQUIRY INTO CASINO GAMING: WESTERN AUSTRALIA (Perth 1984); THE REPORT OF THE INQUIRY INTO CASINOS IN VICTORIA (Melbourne 1983) [hereinafter THE CONNOR REPORT]; THE BOOTH REPORT ON THE LEGALIZING OF GAMBLING CASINOS IN NEW SOUTH WALES (Sydney 1982) [hereinafter THE BOOTH REPORT]; THE REPORT OF THE COMMITTEE APPOINTED TO INQUIRE INTO AND REPORT UPON THE LEGALIZING OF GAMBLING CASINOS IN NEW SOUTH WALES (Sydney 1977) [hereinafter THE LUSHER REPORT]; ALLEGATIONS OF ORGANIZED CRIME IN CLUBS (Sydney 1974) [hereinafter THE MOFFIT REPORT].

dial, regulatory or prohibitory intervention by government. From the 1890's to 1960's, government legislation and control of Australian gambling was seen as essential to guarantee three overlapping principles derived from a largely British heritage. The first principle was that gambling operations were allowed to cater only to unstimulated demand; marketing for the purpose of creating new customers was generally prohibited. This was intended to limit the extent of commercial gambling and place tight restrictions on the social damages that it could produce.¹³ The second principle involved making a clear distinction between "moral" and "rational" forms of gambling. This distinction rested on particular definitions of these notions constructed in class-based terms of public (*i.e.*, disreputable) and private (*i.e.*, respectable) gambling. Thus the working class wagering traditions of SP betting and "two-up schools" were continually under attack from law enforcement agencies, while off-track betting through the Totalizator Agency Board (the TAB), lotteries, and poker machines in registered clubs were all tolerated and encouraged within some jurisdictions and in their particular organizational settings. The third principle was that control of gambling-related "crime" (usually defined in economic terms as unapproved (unlicensed) gambling operations, cheating by gamblers, or excessive profiteering or tax avoidance by operators) needed to be strictly controlled through statute and regulation.

Prior to the 1960's, therefore, the bulk of Australian gambling legislation usually followed the British model. The changing relation between law and gambling during this period in both countries can be summarized as a move from a relatively neutral set of legal restraints, to a body of law which aimed at restrictions of general public gambling supported by the attendant political debates about the relation between social decay and the spread of gambling, particularly among the working classes.

Due to the absence of a well-established system of class or special interest dominance over emerging gambling institutions, early Australian gambling legislation reflected, to an exceptional degree, a response to public demands instead of industry demands. One of the reasons that gambling has had a legitimacy and respectability in Australia not possessed in other countries is that commercial gambling has been seen to be under the firm control of state or Commonwealth governments. The creation of supposedly impartial regulatory structures to ensure control and the imposition of constraints on the commercial activities of gambling entrepreneurs played a key role in the expansion of many

13. REPORT OF THE ROYAL COMMISSION ON GAMBLING, Cmd. 7200, 286-308 (London 1978) [hereinafter ROTHSCHILD REPORT].

of the forms of Australian gambling.

With the exception of commercialized horse racing and betting which were under a system of government control and regulation, pre-World War II gambling laws in Australia were essentially negative; proscriptive and discriminatory in practice (particularly in terms of class, gender and age) but without resorting to the blanket legal prohibitions of the United States. Judicial and legal responses on the whole, to the commercialization of gambling, discriminated between social classes by guaranteeing the protection of gambling in private clubs, but strictly controlling or prohibiting gambling in public places or on the street.

The periodic redefinition of legal and illegal gambling practices has been the result of the complicated process of negotiation between parliamentary representatives, government bureaucracies, the media, religious groups and other pressure groups. Ambiguities and contradictions in gambling laws have been critical in limiting the effects of legal controls. Many of the legislative initiatives of the early twentieth century attempted to regulate forms of popular Australian gambling along the lines dictated by prevailing (often British) ideological, bureaucratic, and political norms. Problems of enforcement resulted, and there is still ample evidence in Australia of the widespread survival of practices proscribed by statute.

Frequently, the discretionary practices by the police and discordant interpretations of laws by the judicial system in implementing gambling rules and regulations have substantially altered the original intention of the gambling statutes. In some notable cases, for example, the semi-official approval of "two-up" on Anzac Day, government policies of control have guaranteed the survival or reorganization of illegal gambling practices.

A striking point of difference between gambling legislation in Australia and in Britain is that Australian gambling laws covering legalization, regulation, and taxation have been firmly in the hands of several different state governments. The Commonwealth government's powers over gambling are severely limited and are mainly confined to very limited and politically sensitive roles in the scrutiny of "organized crime" and international investment. Moreover, there has never been a national government inquiry into Australian gambling, similar to those in Britain and the United States.¹⁴

One important distinction between the state and Commonwealth governments on the taxation of gambling is the entire Australian tax

14. *Id.* See also GAMBLING IN AMERICA: COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING (Final Report), (Washington D.C. 1976).

structure and those areas where the Commonwealth government has taken the exclusive right to levy certain types of taxes. During World War II, for example, the Commonwealth government assumed total control over income taxing powers. State governments found themselves constrained and forced to develop new broad-based tax revenue sources. As attitudes toward commercial gambling altered from restrictive to permissive, states often turned to the expansion of commercial gambling as an important source of government revenues. By 1980-81, state governments were generating approximately \$600 million from taxes and charges on gambling, representing about 13% of total state revenues.¹⁵ The combination of liberalizing attitudes toward the morality of gambling, coupled with the necessity of revenue generation and the limitations on tax options, made the state governments far more aggressive in pursuing revenue opportunities linked to gambling than they would have without the Commonwealth constraints.

In spite of broadly similar legislative and judicial institutions and social characteristics among the various Australian states, there has been a wide variation in gambling legality and illegality over the years. Bookmaking and totalizators have been allowed in some states but not in others. Lotteries have evolved similarly, and when legalized, have been government-run in some places while privately owned in others. The vigorous debates since the 1970's over the introduction of casinos have also brought about a variety of outcomes.

The practical administration and implementation of much of Australian gambling legislation has been in the hands of a fragmented network of government departments or of government-appointed statutory authorities (quasi-government bodies). Without a coherent system of regulation or a clearly-defined set of principles to guide gambling policies, policy decisions on the regulation and sponsorship of gambling have tended to be made on an ad hoc basis, increasingly guided by parochial, political, economic, and bureaucratic considerations rather than a commitment to suitably regulated, comprehensive, and consistent gambling practices that reflect the public interest.¹⁶ The determination of policies for specific circumstances, and the long term direction of gambling regulation and administration, as in the United States, have been increasingly influenced by the commonality of objec-

15. State revenues from the taxation of gambling had exceeded the 12.5 percent rate goal previously established. B. Reece, *Potential Effects of Australian Tax Reform on the Gambling Industry's Environment and Revenues*, in *GAMBLING IN THE 80's*, *supra* note 4, No. 17, at 2; J. Johnson, *Gambling as a Source of Government*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 78-93.

16. See generally J. McMillen, *Casino Gambling in Queensland: Prospects, Problems and Paradoxes* in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 232.

tives between government agencies and commercial gambling operators, with the subsequent development of close alliances and cooperative relations. Over the past fifty years, the desire for increased revenues from popular gambling gradually has diverted the attention of public authorities away from issues of control and regulation towards government revenue objectives. The most significant outcome of this shift in government priorities has been a movement toward stimulation of both the intensity and scope of commercial gambling. Government-sponsored introduction of large-scale private sector gambling operations, especially since the 1960's, has introduced new forms of gambling (lotto, pools, casinos) into the Australian market.

Two significant developments in the period from 1900 to 1960 should be noted: the consolidation of the totalizator as the vehicle for government regulation of horse betting practices, and the emergence of state lotteries as a means of organizing popular gambling propensities to the financial advantage of governments. In contrast, the development of gambling in both Britain and the United States was much more restricted over this period and, where gambling legislation did occur, those governments left operations largely in the hands of private firms.

In Australia, the established government monopoly over popular gambling began to change dramatically in the 1960's when under the supervision of government, new developments in gambling (e.g., lotto and casinos) took on many of the characteristics of more recent commercial innovations in other parts of the world. The approach by Australian state governments to the framing of gambling legislation and policies began to diverge from the more cautious and moralistic principles of earlier traditions and considerations to one of actively encouraging private ownership of gambling enterprises and stimulating participation in gambling throughout the entire community.

The following case studies explore in greater detail the process and effects of Australian state law-making, and illustrate the role of various political forces, pressure groups and bureaucratic interests in the construction of some of the current gambling statutes in Australia.

Case I: The Regulation of Horse Race Betting

It is significant that the first form of gambling institutionalized in Australia was horse racing.¹⁷ By the 1850's every capital city in Australia

17. In the Australian colonies of the late eighteenth century and early nineteenth century, gaming and betting survived even more clearly than they did in Britain:

The governors and the wealthier settlers attempted to achieve this by establishing themselves as colonial versions of Britain's pre-modern gentry. In adopt-

lia had well-established turf clubs governed principally by men of property and status. These clubs were typically organized along traditional British lines. With the accelerated economic growth of the 1880's, however, the dominance of the rural propertied class and their transplanted cultural standards began to be challenged by the political, social and cultural changes associated with rapid industrial and urban development.

The pastoral and agricultural sector was confronted with the growth of industrialized urban communities; together they provided a catalyst for the expansion and reshaping of racing and betting. A new group of commercial and professional interests emerged in the development of gambling laws. Private company proprietary racing clubs challenged the pastoralists' exclusiveness and dominance over racing. These private racing clubs established new tracks, organized more frequent and regular meetings, improved facilities, and encouraged betting as a regular leisure activity. However, the changes in social values implicit in these developments, while confronting the established values of the colonial gentry, did not alter prevailing social and economic aspirations. Primarily through bloodstock breeding, racing became a major industry tied closely to the nation's development. The social values of racing and betting were promoted as symbolizing the unity and vitality of Australian society. Since 1861, when the public's favorite, *Archer*, won the first Melbourne Cup, interest in this horse race has drawn Australians together in a way that no other supposedly "national day" has been able to do.

Australia produced a multiplication of entrepreneurs, each subject to the legislation of a particular state, unlike Britain where entrepreneurs utilized the connection between gambling and sporting events such as racing to establish a national network of betting shops.¹⁸ Consequently, in relation to race horse betting, a wide variety of legal gambling practices could be found in Australia at any one time. By 1930, the general position throughout Australia was that betting was permissible at racecourses with private licensed bookmakers and the totalizator (the tote). Off-course betting, however, was illegal under any cir-

ing the behaviour patterns and attitudes of this group rather than those of the new industrial middle class, they insured the continuance of gaming and betting in the colonies. In this context, the few voices raised against gaming and betting had little chance of success.

J. O'Hara, *Getting a Stake: Gambling in Early Colonial Australia*, in *GAMBLING IN THE 80's*, *supra* note 4, No. 2, at 20. For a discussion of horse racing see *id.* at 11-17.

18. Vamplew, *The Sport of Kings and Commoners: The Commercialization of British Horseracing in the Nineteenth Century*, in *SPORT IN HISTORY* 307 (R. Cashman & M. McKernan, eds. 1979).

cumstance. Despite this prohibition, with assistance from innovations such as telephones and radio broadcasts of race results, illegal SP betting continued to be so popular during the 1930's that South Australia, Northern Territory, and Tasmania legalized off-course bookmaking under strict licensing regulations contending that the state governments could capture the licensing revenues permitted by such regulations. Other governments, such as Queensland, simply sought to eradicate any conditions which might facilitate widespread SP betting, such as advertising, the publication of starting price information and the activities of tipsters.

The processes and outcomes of Australian gambling legislation regarding horse betting can be seen by examining three particular developments in this century in the states of New South Wales and South Australia: the introduction of the totalizator on New South Wales racecourses in 1916; the reorganization of betting practices in South Australia between 1920 and 1938 to regulate crowd behavior around the race-course totes; and, the introduction of the government-run TAB in New South Wales in 1964.

Some colonies had introduced the tote as early as 1879, but there was strong opposition to its adoption in the largest colonies of New South Wales and Victoria on the grounds that it would increase public gambling. The parliamentary and public debates over the possible influences of tote gambling were so intense that a Royal Commission was established to consider its significance. Opinions were sought in several states from racing club officials, police officers, clergymen, journalists and bookmakers. These findings exposed conflicting views on the question of betting and its social effects. Two reports were issued; one by the majority of the Commission, which was opposed to the totalizator, and the other by the minority, supporting its introduction.¹⁹ By 1916, however, the government had legalized the tote on New South Wales racecourses, motivated partly by the need to generate tax revenues during wartime. In the changed political circumstances of the First World War, the moral and social questions of containing ordinary betting with bookmakers were subordinated by a move by the legislature to turn the betting preferences of the public into the financial advantage of government. Other states were already benefitting from race-course tote revenues, and the New South Wales government could not afford to forego a similar opportunity to fund social service programs.

The movement by the government to expand gambling facilities,

19. The two reports were: *THE REPORT OF THE ROYAL COMMISSION OF INQUIRY IN THE TOTALIZATOR* (New South Wales 1912); and *ROYAL COMMISSION OF INQUIRY INTO THE TOTALIZER* (New South Wales 1912), respectively.

however, was not universalist; it simultaneously differentiated between social groups. Many formal limitations were placed on the economic involvement of women in gambling-related industries. Until recently, women could not become members of racing clubs, or act as officials or trainers. Cultural conventions excluded them from other male-dominated activities, such as riding as jockeys. The participation of women in gambling remained a moral concern, even among the advocates of the tote. Over time, however, racing and gambling interests would see advantages to greater participation by women in gambling. While frequenting bookmakers was considered inappropriate for women, the tote offered a more regulated and socially distancing alternative. A major effect of the tote was to create women as new gamblers and to switch the emphasis from "immoral" consequences of betting to more positive associations with a healthy racing industry and public welfare. Women, furthermore, became heavily involved in TAB betting both as "respectable" gamblers and as workers. TAB agencies are now strategically located in shopping centers to facilitate female participation, and women provide the bulk of the cheap, semi-skilled labor which operates the TAB system, unlike earlier periods when women were expressly prohibited by law from working on the totes.

Once state governments decided to capitalize on popular gambling, the considerations which influenced gambling policies and laws were more in terms of economic rationality than the religious and moral concerns which had organized debates prior to the First World War.²⁰ South Australian gambling legislation during the interim between World War I and World War II provides a good example of this shift in political objectives. Unlike many other states, the South Australian government had previously tried unsuccessfully to prohibit all bookmaking in the state, replacing bookmakers with the racecourse totalizator. The difficulties in implementing this law led to an attempt to tighten police powers over illegal bookmaking, first by expanding the definition of "public place" to authorize police actions against illegal betting on premises previously defined as private and on racecourses controlled by private clubs; and second by ensuring more equitable distribution of totalizators to reduce the patronage of illegal bookmaking.²¹ This legislation was amended further in the following year to deal with continuing problems of enforcement in relation to illegal gambling and to provide for crowd control at racecourses.

20. "No philosophical investigation of the ethics of gambling has been published in Australia since 1923. . . ." R. Sylvan and L. Sylvan, *The Ethics of Gambling*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 217.

21. Lottery and Gaming Act Amendment Act, 1920, S. Austl. Acts.

In the longer term the government had to face persistent proliferation of SP betting and inevitable tax evasion, despite attempts to ban bookmakers altogether. In 1933, a Royal Commission on Betting recommended the establishment of a state-wide off-course totalizator. The government, however, ignored this recommendation and instead legalized off-course bookmaking under a Betting Control Board. Problems with illegal betting continued along with allegations that the 1933 law had greatly expanded betting opportunities rather than controlling them. Despite another Royal Commission in 1938, these issues remained unresolved. For the next thirty years governments were faced with difficulties of policing gambling laws and resolving the conflict over the ethical status and social consequences of widespread betting, while trying to capture betting taxes for the shrinking public purse.

The determined preference by many gamblers for illegal SP off-course betting over government-licensed bookmakers, whether on-course or off-course, became a growing concern for public authorities after World War II. Larger incomes, improved communications, expanded leisure time and attempts by state governments to levy higher betting taxes to increase public revenues all gave impetus to popular illegal betting. Confronted by high costs of post-war economic development, a diminished tax base, as well as a costly and politically unpopular attempt to enforce legislation against illegal betting, every Australian state government followed Victoria's example after 1960 and introduced a network of government-operated TAB off-course agencies.

This development contrasts with shifts in off-course betting practices elsewhere. In Britain, off-course monopoly betting was placed largely in the hands of private betting shops so that there was no competitive advantage for illegal bookmakers.²² In the United States, off-track betting was legalized in New York and Connecticut in the early 1970's but has not spread into other jurisdictions.²³ Illegal horse betting activity continues to thrive in most of the other states where there

22. J. Dessant, *The Betting Shop Industry in Glamorgan 1961-1967*, in *GAMBLING, WORK AND LEISURE: A STUDY ACROSS THREE AREAS* (1976).

23. *THE BUSINESS OF RISK*, *supra* note 4, at 164-74. In New York, on April 16, 1970, after eighteen years of studies, a Court of Appeals decision, and failed attempts by the legislature, Governor Rockefeller and New York City's Mayor Lindsay introduced legislation to create local-option off-track betting. On April 22, 1970, the bill, having passed both houses of the legislature, was signed into law. *Id.* at 168-70. D. WEINSTEIN & L. DEITCH, *THE IMPACT OF LEGALIZED GAMBLING: THE SOCIOECONOMIC CONSEQUENCES OF LOTTERIES AND OFF-TRACK BETTING* 95-119 (1974). In Connecticut, plans have been made to enable off track betting to be tied to race tracks in other states. Connecticut does not have horse racing tracks at this time. The model for New York City off-track betting was derived from the Australian Off Track Betting system. *Id.* at 117.

is a traditional reluctance to facilitate regular, organized gambling of this type.

The early and innovative development in Australia towards government-run off-course betting, at first glance, could be seen simply as the imposition of bureaucratic controls to resolve a growing social problem of illegal betting. Both the uneasy balance of earlier periods between moral disapproval of widespread SP betting and the arbitrary and often minimal, enforcement of legal prohibitions against it by the police and judiciary has been replaced by a new set of considerations. State governments have assumed a greater role as gambling entrepreneurs, promoting off-course betting to their own fiscal and political advantage. This active marketing role conflicts with traditional objectives and procedures, an issue which was hotly debated by the main protagonists before the various commissions of inquiry which preceded the reorganization of this form of gambling.²⁴

The combination of cultural traditions, new bureaucratic norms, and profit motivations, all of which have been accommodated in the legislation governing the TAB system, is constantly being reviewed and modified as new issues and conflicts emerge. The legislative changes that have been made highlight the constant and often contradictory demands on state governments to ensure greater community acceptance and participation, to attract commercial support for the industry, to counteract competition from other forms of gambling, to sustain or increase revenues and to maintain government control over developments.

Case II: The Australian Lotteries

The extent of government intervention into lotteries in Australia has equaled that of off-course betting developments. The social and moral implications have, however, been quite different. Prohibition of both types of gambling was based on assumptions of their tendency to demoralize the community, their emphasis on immediate economic gratification and particularly, their potential to encourage public disorder in the streets. From the outset, however, considerations behind the relaxation of anti-gambling laws and legalization of lotteries were primarily financial in character. Until the nineteenth century, lotteries in Britain and the United States had a long history as a successful way to raise government revenue.²⁵ In Australia, three main economic issues

24. See generally *supra* note 11.

25. See J. S. EZELL, *FORTUNE'S MERRY WHEEL: THE LOTTERY IN AMERICA* (1960). For a complete public account of the early prevalence of lotteries in Australia and the considerations associated with them, see *SOUTH AUSTRALIA REPORT OF THE ROYAL COMMISSION ON LOTTERIES* (Adelaide 1936).

were crucial. First, the immediate problems of economic recessions and depressions pressured some state governments, such as New South Wales in 1931 and Tasmania in 1983, to turn to lotteries as a way of bolstering the shortfall in general consolidated revenues. Second, the strain on government funds by specific new areas of public welfare expenditure, particularly hospitals, increased the need for new revenue sources. This was illustrated by actions in Queensland in the 1920's and Victoria in the 1950's. Third, there was an attempt by each state government to protect its own revenue base from interstate intrusion. In Tasmania, for example, the early success of Tattersall's, a privately owned lottery introduced in the 1890's, depended greatly on out-of-state sales. Attempts by other state governments to use post office regulations to stop the sale of these lottery tickets through the mail service failed and governments were compelled to consider the option of setting up their own lotteries to finance their social programs. This process was quite similar to the spread of lotteries in the Eastern United States between 1970 and 1975, as states legalized lotteries largely on the rationale of preventing out-of-state ticket purchases by their citizens and the subsequent revenue and economic losses.²⁶

The political dimension of new lottery legislation in Australia required governments to carefully balance their economic, political, social, and moral implications to arrive at the necessary trade-offs between revenue generation, popular demand, and interest groups.

The establishment of government-run lotteries in Australia early in the twentieth century was as politically contentious as the establishment of the tote and off-course betting. Lotteries, however, presented a more socially and morally palatable form of gambling, particularly when linked directly to new types of welfare projects. Justification for government sponsorship of lotteries was based on demands for an expanded participation by governments in tax-funded social policy, in spite of opposition from anti-gambling church groups and from political conservatives who resisted any increased government activity in formulating social policy.

After World War II, existing government mechanisms of control over lotteries were tightened and new mechanisms were introduced.

26. Changes in the state operated lotteries "have made lotteries competitive in nearly all segments of the market and currently perhaps the aggressive form of commercial gambling in Australia." *THE BUSINESS OF RISK*, *supra* note 4, at 57. Lotteries began as annual events in New Hampshire. They have now spread to a majority of states, which are presently running weekly and daily lotteries. A study of this growth shows that the addition of lottery activity in one state has been in reaction to another state's adding to its lottery offerings. See generally *id.* at 56-68, 212-213.

With the growing number of competing commercial gambling opportunities, such as lotto and pools, the economic success of lotteries depended on the extent to which lotteries could attract and retain a sizeable share of the gambling market. To this end, gambling legislation has been continually amended to allow lotteries to be more commercially competitive and to utilize technological and administrative developments. This also parallels the evolution of the lottery industry in the United States.

Australian state governments have been able to take advantage of the gambling "boom" in other ways. Their authority over lotteries is so firmly established that they have the power to extract very high rates of taxation from commercial operators of lotto and pools in return for the necessary operating licenses. As with betting, the post World War II trend in gambling laws and administration has been towards an approach which has more affinity with commercial practices than with the traditional government regulatory practices of earlier periods.

Case III: Poker Machines in Australia

Legal poker (slot) machines were first allowed in registered clubs in New South Wales in 1956, although the presence of illegal machines could be traced back to the early 1900's. The registered clubs, which were typically run by service organizations such as veterans, sporting, or religious groups, became popular in the late 1940's as public places where citizens could drink. Prior to that time, hotels were the major outlet for liquor. Court rulings determined that clubs could serve drinks beyond the prescribed hotel serving hours, increasing the popularity of these clubs. Along with their increased popularity, the clubs initially possessed illegal poker machines and used the proceeds to provide members with various amenities and subsidize the food and drink offered to their members. In 1956, under pressure from the hotel industry because of a loss of their business to the clubs and in response to the constituency of the registered clubs themselves, the government resolved the conflict about illegal poker machines in registered clubs by legalizing the machines and charging license fees.²⁷

Over the three decades since they were first legalized, poker machines have become an integral part of social life throughout New South Wales, as well as an important revenue source for the State gov-

27. Nielson, *Gambling Policy and Experience in Australia*, in 1 *THE GAMBLING STUDIES: PROCEEDINGS OF THE SIXTH NATIONAL CONFERENCE ON GAMBLING AND RISK-TAKING* 436, reprinted in *BUR. BUS. & ECO. RES., U. NEV. RENO*, (W. Eadington ed. 1985); *THE REPORT OF THE BOARD OF INQUIRY INTO POKER MACHINES*, (Melbourne 1983) [hereinafter *THE WILCOX REPORT*].

ernment.²⁸ (They were also legalized in registered clubs in the Australian Capital Territory in the 1970's.) By the mid-1980's there were about 1,550 registered clubs operating in New South Wales, with a total of about 49,500 poker machines in use. In 1986 there were about 84,000 slot machines in Nevada and about 16,000 slot machines in Atlantic City. Poker machines in New South Wales generate an excess of \$1 billion per year in gross winnings, and taxes on poker machines account for about 6% of the state government's revenues.

Registered clubs run on a not-for-profit basis, which implies that the excess of revenues over expenses for the clubs must be directed toward activities that either directly benefit the membership (such as subsidized food, drink, entertainment, or other activities) or they must be directed to other worthy causes, such as amateur sporting teams, charitable organizations, or local community projects. Because of the significant income earning ability of many of the registered clubs with their poker machine revenues, they have often acted as a "second local government" by undertaking the construction and maintenance of public facilities such as sporting complexes or community social halls, and have been active in making financial contributions and sponsoring community programs that would have otherwise been the responsibility of local government.²⁹ In this respect, there is a close parallel between the use of allowed gambling by registered clubs in Australia and the recent development of charitable casinos in the Canadian provinces of Alberta, Manitoba, and British Columbia.³⁰

The presence of poker machines in New South Wales and the Australian Capital Territory has not been totally without controversy. In 1983, the Wilcox Commission³¹ found that significant problems existed among some of the clubs with respect to tax evasion, player cheating, theft by club management or staff, and possible kickbacks or illegal commissions paid by poker machine manufacturers for placement of

28. From 1956 to 1980, the New South Wales government received \$902,000,000 in poker machine taxes. G. Caldwell, *Poker Machine Playing in N.S.W. and A.C.T. Clubs*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 261.

29. See, e.g., K. Knock, *The Funding of a Major Recreational and Leisure Organization*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 269 (the organization discussed is a place of employment for over 320 people, representing \$5,000,000 in wages per year); B. Lewis, *The Southern Cross Club: A Family Club's Experience with Poker Machines*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 273, 275 (gambling club contributed over \$1,000,000 to a community development fund).

30. See C. Campbell and J. Ponting, *The Evolution of Casino Gambling in Alberta*, in *X CANADIAN PUB. POLICY* J. 2.

31. See *THE WILCOX REPORT*, *supra* note 27.

their machines.³² Concerns over the possible integrity of poker machines by state governments have prevented their widespread legalization. In jurisdictions besides the Northern Territory, slot machines are prohibited, even though casinos are legal throughout Australia, perhaps as a result of the same concerns.

Case IV: Australian Casinos

Questions about the degree of public and private involvement in Australian gambling historically have produced a legal and regulatory structure in which governments have played an exceptionally central role as both regulator and operator. In the past decade, however, the introduction of casinos into all but two Australian states has changed the role of state governments in determining gambling trends in the country.³³ The presence of casinos as an integral feature of an expanding international tourist industry is the clearest example of how the objectives of government-sponsored legislation have shifted from a basically reactive attempt to mediate between gamblers, the local gambling industry, and moral and social interests, to actively encouraging an expansion of new forms of gambling to meet broader tourism and economic development objectives.³⁴

The new casinos in Australia are designed to attract as many gamblers as possible. Historically, the total and consistent prohibition of public gaming (particularly games popular with Asians and Europeans) has been one of the most distinctive features of previous Australian gambling legislation. While other forms of illegal gambling have thrived, casino gaming had not been popular with average Australians. In the years prior to World War II there was no aristocratic "leisure class" to create a market for European-style casino gambling. The image of casinos catering only to certain social classes is incompatible with the accepted view of Australia as a classless, egalitarian society.

Illegal casinos first appeared to a significant degree in the post-

32. *Id.* For a general survey of the types and prevalence of crime associated with gambling see B.S. Bongiorno, *Gambling and Crime*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 208; see also R.C. Clark, *Licensing: A New Concept in Controlling Organized Crime in the Amusement Machines Industry*, (presentation to the National Association for Gambling Studies, 1985 Conference) (available in Griffith University Library, Brisbane).

33. As of 1986, casinos are operating in Hobart (opened in 1973), Alice Springs (1981), Launceston (1982), Darwin (1983), Surfer's Paradise (1985), Townsville (1986), Adelaide (1986), and Perth (1986). See Hurley, *Australian Gaming: Poised for the Big Leap*, 5 *GAMING & WAGERING BUS. MAG.* 11, (Nov. 1984).

34. McMillen, *supra* note 16, at 233-35.

World War II years.³⁵ Even then they were on such a small scale (with the notable exception of the exclusive European-style casinos of Sydney) that they did not present a major threat to the control and revenue functions of government in the way that widespread illegal SP betting did. The introduction in 1973 of Australia's first casino at Wrest Point in Tasmania precipitated a move by other state governments to consider casino gambling as one way of revitalizing regional economies through tourism while simultaneously gaining access to another much needed source of tax revenue.

Unlike the considerations which guided other major gambling innovations in earlier periods, it was never seriously thought that Australian casinos should be government-operated. All the Australian casinos that have been established so far are operated by large commercial enterprises. Government intervention is confined to the more residual role of prescribing operating conditions and scrutinizing casino operations. Initially, some state governments hesitated to facilitate new forms of gambling outside direct government control, but the lack of other exploitable government-run gambling opportunities limited their capacity to match the revenue-generating potential of direct taxes on casino revenues. Furthermore, interstate competition for a large share of the tourism market meant that economic and political priorities prevailed over other considerations.

Casino legislation, along with earlier forms of gambling legislation, represents an attempted resolution of the interests and objectives of various protagonists. Unlike earlier major gambling changes, however, there was very little vocal opposition to the commercial expansion of legal casino gambling into the community. The underlying principle of earlier gambling laws which had avoided stimulating participation was, for the most part, ignored in the various casino legislations.

The moral climate in Australia was ripe for such a new direction in gambling developments by the 1970's. The unprecedented growth in legitimate gambling industries since the 1960's had been accompanied by a substantial transformation of public and political views about gambling. The development of tourism and leisure services industries in the post-war period became a powerful force in the reassessment of gambling in more positive terms as both a personal entertainment experience and as a vital component in the national economy. The re-orientation of domestic and immigration policies to encourage ideas of multi-culturalism had effectively broken down the rationale for legal

35. See generally D. HICKIE, *THE PRINCE AND THE PREMIER* (North Ryde, N.S.W. 1985); A. MCCOY, *DRUG TRAFFIC, NARCOTICS AND ORGANIZED CRIME IN AUSTRALIA* (Sydney 1980).

discrimination against ethnic gambling. By the 1960's, illegal European and Asian card clubs were thriving, particularly in Sydney, and illegal casinos began to appear in all major cities, presenting a challenge to the reasonability of government prohibitions.³⁶ The emergence of legal casinos brought about the transformation of formerly illegal gambling activities, such as two-up, blackjack and sic-bo, into commercially profitable, legal forms of popular entertainment.

Changing social attitudes and economic affluence in the post-World War II era also undermined the power of moral and religious objections to casino gambling. Only in Victoria and the Australian Capital Territory were moral campaigns against proposed casinos mounted with any success.³⁷ A residual strand of moralism nevertheless continues to be a crucial influence on the tone of casino legislation, however, and is still apparent in the public statements and actions of state governments. Since gambling is now more respectable, gamblers are now expected to be more responsible. All sections of the community are encouraged to gamble, but informal sanctions which operate through discriminatory notions of "respectability" and "rationality" have placed the onus of constraint on the gamblers themselves.

In explicitly cooperating with entrepreneurs to stimulate public demand for commercial casino gambling, Australian governments have acted very differently from the more restrained approach taken in previous policies. Australian casino controls are less an accommodation of popular public attitudes than they are an illustration of pragmatic decision-making and bureaucratic regulation to foster a broad-based growth economy, with tourism as a key element. These controls also assist the profit-motivated functions and objectives of casino operators. With the introduction of casinos, the role of state government in casino development has become increasingly concerned with shaping the investment climate. The economic needs of operators and of governments themselves are significant factors guiding legislation, instead of the nineteenth century notion of protecting public morality and meeting public demand.³⁸

The decriminalization and promotion of casino gambling has fea-

36. "[T]here existed on the northern side. . . some seven casinos. . . which had operated for many years. . . . They were condoned and tolerated to the extent that the police conducted regular raids." D. K. Dans, *The Establishment of A Legal Casino In Western Australia*, in *GAMBLING IN THE 80's*, *supra* note 4, No. 8, at 1.

37. See generally S.A. Reid, *The Churches' Campaign Against Casinos and Poker Machines in Victoria*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 195; H. Kincoh, *Casinos for Canberra*, in *GAMBLING IN AUSTRALIA*, *supra* note 3, at 202.

38. W.R. Eadington, *Regulatory Objectives and the Expansion of Casino Gambling*, VI *NEV. REV. BUS. & ECO.* 4-13 (Fall 1982).

tured distinctly regional responses between the various states, based on different moral climates and market competition for casino licenses. Some state governments approached the casino question in the conventional way by setting up public commissions of inquiry.³⁹ The first casino at Wrest Point was introduced only after the Tasmanian public had given approval through a referendum. Inquiries in Victoria and the Australian Capital Territory, on the other hand, proved to be susceptible to moral campaigns against increased gambling in general and casinos in particular. Casino gambling was perceived as presenting a serious political, social, and moral problem with the potential to challenge the prevailing social morality. Casino developments, particularly those in the United States, were presented as being tainted by associations with organized crime and exploitation of the local community.⁴⁰ Other state governments, however, asserted that substantial changes in existing structure, the nature of casino operations and increased government regulation had improved the legitimacy and integrity of casino gambling, which no longer posed a threat to the revenue and control objectives of Australian governments. Some state governments, such as Queensland, adopted an unusually pragmatic approach to gambling by rejecting any type of public inquiry as unnecessary and time-wasting, arguing that the urgency of local economic issues required a rapid decision.⁴¹ Investigations into the potential social and control implications of casino developments, in these cases, were conducted internally by government bureaucracies removed from normal parliamentary processes of review and debate.

These different approaches have also influenced regional variations in the types of casinos that have been established, in their corporate structures and in the regulatory mechanisms which are intended to direct casino management on behalf of the public. All the Australian casinos are incorporated into newly developed "entertainment-convention" complexes, carefully designed casino-hotel complexes, which offer a wide range of amenities, such as restaurants, nightclubs, discos and high quality shopping facilities.

Under the present approach, there will be no local economies heavily dependent on casinos, as is the case in Las Vegas, Reno and Atlantic City. The state governments have limited the presence of casinos in each of the locations by passing legislation authorizing only a

39. See, e.g., REPORT OF THE COMMITTEE APPOINTED TO INQUIRE INTO AND REPORT UPON GAMING IN WESTERN AUSTRALIA (1984); THE CONNOR REPORT, *supra* note 11; THE BOOTH REPORT, *supra* note 11; THE LUSHER REPORT, *supra* note 11.

40. See generally, J. SKOLNICK, HOUSE OF CARDS: THE LEGALIZATION AND CONTROL OF CASINO GAMBLING (1978); THE CONNOR REPORT, *supra* note 11.

41. McMillen, *supra* note 16, at 238-42.

single monopoly casino in a particular area, and then requesting bids from potential casino complex operators. The selection process reduces the number of candidates down to a small group, and through a negotiation and selection process the government chooses a single operator and draws up an agreement between the operator and the government. That contract is then passed into law by the state's Parliament.⁴² This process closely parallels Skolnick's "zoning-merit model," which he argued would be an effective way of controlling both the size of the local casino economy and the quality of the casino operator, especially in comparison with the Nevada and New Jersey approaches to casino development and expansions.⁴³

The approach of creating a "monopoly casino" in a particular geographic area has other potential advantages for state governments. By granting a monopoly franchise, the state government is creating an environment where excess profits can be earned through the casino operation. By utilizing the bidding and negotiation process, the government is attempting to capture the major portion of the excess profits, either in the form of tax revenues received from the operation, in the subsidized construction of tourist related facilities, in the implementation of socially protective regulations, or in the provision of other negotiated services by the casino operator.⁴⁴ The major calculation in this approach for the state is to anticipate the profitability of the casino operation well enough to capture a significant portion of excess profits, while still leaving enough to attract the potential private sector operator. Queensland's initial attempt, for example, to balance the government's interests in its casinos with those of potential operators backfired when the original licensee withdrew.

The states have, in most cases, strategically located a casino complex in an urban area where it can draw on a stable population and a substantial regional catchment area for patronage. In addition, perhaps, the most important consideration in awarding casino licenses is the potential of each casino to develop the lucrative domestic and international tourist market. Casinos, therefore, have been situated in cities with direct tourist appeal or which are gateways to key tourist regions. The fulfillment of the state's expectations on tourism development is an important consideration in the continuing relationship between the state and the casino operator. In the Northern Territories,

42. For examples of the final result, see Darling Harbour Casino Act, 1985 Queensl. Acts No 5; Jupiter Casino Agreement Act, 1983 Queensl. Acts No. 7; Casino Control Act, 1982 Queensl. Acts No. 78.

43. J. Skolnick, *A Zoning Merit Model for Casino Gambling*, in *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE* (July, 1984 at 48-60).

44. See generally W. R. Eadington, *supra* note 38.

for example, the government replaced an Australian company, Federal Pacific Hotels, as the casino operator for the Alice Springs and Darwin casinos in 1985 because of apparent dissatisfaction with the lack of development of international tourist traffic.

Consideration of competing developments in other states has, inevitably, played a large part in persuading governments to liberalize casino laws and in choosing the type and location of new casinos. The proximity of the Launceston "country-club" casino to the large Melbourne metropolis, for example, has capitalized on the Victorian government's defiant prohibition of casinos and tapped into the market potential of that state.

Such considerations have also had implications for the types of corporate organizations which have been licensed to operate the casinos and for the regulatory structures which have been established to control them. The first four casinos, relatively small complexes in Tasmania and Northern Territory, were developed by Federal Pacific Hotels. The new operators of the Northern Territory casinos are British, and casino developments in other states have granted licenses to joint ventures between Australian investors and international casino corporations from the United States, Japan, and Malaysia. These multi-national operators are perceived to possess the particular expertise, resources and organizational breadth capable of providing superior services considered necessary to boost tourism and to attract local gamblers.

Australian casino laws and the structures and processes they produce and sustain, compare in interesting ways with those in Britain and the United States. In Britain, the conservative tradition of gambling legislation has continued to construe casino regulations in terms of unstimulated demand, unobtrusive marketing and government protection of social rights by a centralized, coordinating public body, the Gaming Board.⁴⁵ British casinos are very similar to private recreation clubs, closely monitored by a national government inspectorate, and effectively limited to their own memberships. Most Australian casinos, on the other hand, are large scale developments whose marketing strategy is based on identifying and expanding tourist markets, and maximizing profits. Thus, in structuring the institutional framework for casinos, recent decisions by Australian governments on the whole have tended to be guided more by the American model than the British approach.⁴⁶

45. See J. Kelly, 8 N.Y.L. SCH. J. INT'L & COMP. L. 33 (1987); see also ROTHSCHILD REPORT, *supra* note 13.

46. Of all the Australian states, the South Australian government has been most in-

Each Australian state has appointed an extra-parliamentary government authority to ensure that operators (and gamblers) comply with the specifications of their particular casino control laws. In exercising this control, these regulatory bodies often rely on assistance and information from the very casinos they are meant to investigate. Some states understandably have embraced casino developments with considerable reservation. A number of different strategies, in terms of the style of casinos chosen and the nature of regulation, have been tried in order to strengthen the government's position relative to the operators and other rival states. The Western Australian casino proposal, for example, has adopted a control strategy of simultaneously liberalizing other gambling laws while strengthening and coordinating government control structures over gambling into a single body.⁴⁷

The considerations of powerful commercial interests and state governments' revenue needs from Australian casinos has created a potential problem of government autonomy and control over casino operations. In Australia, the current euphoria over the new casino developments, in the short term, is overriding any consideration of possible problems. However, even in these early stages of the casino experiment there have been some expressions of public concern about the potential for political corruption and for organized crime infiltration of gaming operations or ancillary industries, enough expressions as to undermine public confidence in the government's capacity to enforce control legislation in a consistent and responsible way. Recently, the poker machine industry in New South Wales has been subject to criminal charges which have discouraged other states from including poker machines in their casino repertoires.⁴⁸ Despite this considerable wariness of the integrity of the poker machine industry, laws have been drafted to permit video game machines in most states on the grounds that they are games of "skill," not chance. In both Nevada and Atlantic City, slot machines are the most profitable part of casino operations, and if casinos are to be significant financial successes in Australia, slot machines in some variation will probably be needed. Video machines might play the role of a long term compromise to a no-slot-machine environment,

fluenced by the British model of casino development. The Adelaide casino is European in style, with restrictions on the number of patrons admitted at any time and a complex tripartite regulatory structure closely tied to parliamentary processes of review.

47. "The Gaming Act should create a Gaming Authority which should be independent, autonomous and capable of handling all of the new liberated areas of gaming, as well as some of the existing legal and supposedly legal gaming currently being conducted." D. Mossenson, *The Conduct of A Government Inquiry Into Gambling. An Analysis of the Issues*, in *GAMBLING IN THE 80's*, *supra*, note 4, No. 9, at 18.

48. Clark, *supra* note 32.

or they might just be a short term expedient that will later lead the way to full legal status of slot machines in Australia's casinos.⁴⁹

In attempting to achieve the desired objectives of stimulated revenue and law enforcement, governments are compelled to seek publicly acceptable trade-offs. The crucial question remains: in determining the criteria and priorities of gambling legislation, whose interests ultimately prevail; those of the government treasuries, the gaming operators, or the gambling and non-gambling public?

Conclusion

Australia has long been a country producing a populace with a strong interest in wagering and betting. Over the past century public policies toward gambling have evolved from a set of restrictions and prohibitions aimed at protecting the general public from the moral consequences of excessive gambling, (while acknowledging the cultural necessity for certain types of gambling), to one where the state governments are active entrepreneurs, expanding commercial gambling for revenue purposes and utilizing casino development projects as part of broader tourism development strategies. As in other countries, the moral arguments against gambling do not carry the same weight that they used to. There seems to be a growing understanding that one form of gambling competes against other forms for the consumer's gambling dollar.

The strong role, however, played by the state governments in the direction of gambling law and policy in Australia is virtually unmatched in other free world economies. The relative success of this approach, in comparison to the other ways in which commercial gambling could have been developed, will probably depend on the ability of the various state governments to manage both the future economic conflicts that may arise as the various gambling markets reach maturity in Australia and the potential social and moral problems that may arise as commercial gambling becomes a larger and more important facet of Australia's economy.

49. Between 1976 and 1985, slot machine revenues in Nevada increased from 31.8% of gross gaming revenues to 51.9% of gross gaming revenues. Furthermore, slot machine operations are far less labor intensive than table games, and require less complementary services than table games. Profit margins on slot operations, therefore, have become far more significant over the past decade than those on table games. The 1976 revenue figures can be found in State Gaming Control Board, *Nevada Gaming Abstract*, SEC. & ECO. RES. DIV. (1976). For 1985 see State Gaming Control Board, *Nevada Gaming Abstract*, SEC. & ECO. RES. DIV. (1985).