

[1965. Review of *The Enforcement of Morals*, by Patrick Devlin. *Christianity Today* 8 Oct.]

### MORAL WELFARE STATE

*The Enforcement of Morals*, by Patrick Devlin (Oxford, 1965, 139 pp., \$4 or 25s.), is reviewed by Gordon H. Clark, professor of philosophy, Butler University, Indianapolis, Indiana.

In England the Wolfenden Committee recommended that homosexual practices between consenting adults should no longer be a crime. Lord Devlin, previously a judge of the Queen's Bench and now a Lord of Appeal, in the book under review examines the extent to which the law is justified in enforcing morality. He opposes Mill's libertarian principle that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." This principle is stressed by Wolfenden Committee, in the words, "There must be a realm of private morality and immorality which is, in brief and crude terms, not the law's business."

In defending the enforcement of morality, Lord Devlin, with the detailed knowledge of his profession, notes the peculiarities of English law. Homosexuality between males is a crime, but between females it is not. Adultery and prostitution are not crimes, indeed, prostitutes are relieved of all legal obligation to pay rent on the houses they occupy. Incest became a crime only fifty years ago. With many examples, some of which only a lawyer with a technical knowledge of tort and contract could follow, it is no wonder that the author can conclude, "In law making logic will always be defeated by necessity."

Jurisprudence, however, ought to exhibit some degree of consistency, and Lord Devlin's principle, the opposite of Mill's, is "There are no theoretical limits to the power of the state to legislate against treason, sedition, and . . . immorality" (p. 14). He cites the 1961 decision of the House of Lords that "there remains in the courts of law a residual power to enforce . . . the moral welfare of the state" (p. 88). Again, "Can then the judgment of society sanction every invasion of a man's privacy, however, extreme? Theoretically that must be so; there is no theoretical limitation" (p. 118).

Who then determines what morality is? The author answers, Society. Accepting a thoroughly secular viewpoint, he more definitely indicates that the morality to be enforced is whatever twelve jurymen can agree upon. At present, juries cannot be persuaded to prohibit prostitution, they can be persuaded to prohibit homosexuality between males, and they insist that a man must support the wife he divorces for adultery. Furthermore, Muslims residing in England must forego polygamy, and Jews must not open their shops on Sunday. Of course, this does not interfere with the freedom of religion, for there is a sharp distinction between religion and morality, and these moral impositions have no religious basis—they are simply the present decisions of Society.

This theory is, of course, totalitarianism. God is ignored; Society is supreme; individualism is abhorred; morality is relative; and religion, defined by the state, is reduced to a triviality that ought to have no political or social implications. Would it not be highly immoral to vote for or against a candidate on the ground of his religion? England is not the only land in which important judges enunciate the secularism of common opinion. And while in theory Christians may believe that God is supreme, they must in practice recognize that Society has the power, if not the right, to enforce every invasion of a man's privacy, no matter how extreme. Heil Hitler!

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