

THE HART/DEVLIN DEBATE

PHIL 102
ETHICS, POLITICS, & LAW
SPRING QUARTER 2008

WOLFENDEN REPORT

- 1957
- British law in the early 20th century
- Recommendation on prostitution
- Recommendation on male homosexuality
- Jurisprudential principles

MILL ON LIBERTY

- Harm to others
- Paternalism
- Legal (social) moralism
- One very simple principle

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. 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. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

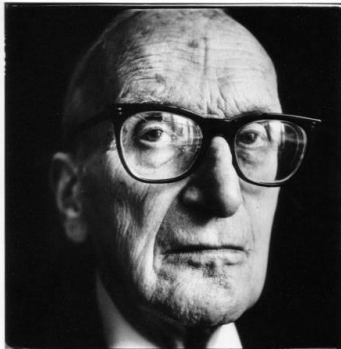
LORD PATRICK DEVLIN

- 1905-92
- Lawyer and judge
- Lecture
- Hart's response
- Book
- Later career

DEVLIN'S ARGUMENT

- Rejects Mill & endorses legal moralism
- Function of law is to enforce morality
 - Murder, etc.
- Enforcing morality is a good thing
 - A society is its moral principles
 - Threats to moral principles are threats to society
 - Society has a right to protect itself
- Endorses toleration, but sets a limit

H.L.A. HART



H.L.A. HART

- 1907-92
- Oxford
- Law practice
- WWII
- Oxford
- *The Concept of Law*

HART'S ARGUMENT

- Qualified defense of Mill
- Paternalism/legal moralism
- Core morality vs. sexual morals
- Empirical nature of Devlin's claim
- Does society always have the right to defend itself?