

## HANDOUT 6: The *Wolfenden Report* (1957) and Morality and the Law

### Morality and Law

The *Criminal Code of Canada* carries specific restrictions on our conduct in both public and private domains. Some of these restrictions keep us safe, some protect our property and some protect us from ourselves.

A significant number of these laws reflect popular morality and societal values. However, moral positions and social standards change over time, altering what conduct is deemed criminal. Into the 1950s, many democratic nations had laws that made it a criminal offence to be gay, lesbian or bisexual. These laws regulated the private conduct of citizens even when it involved consent by both parties.

Vice has always reflected societal values and popular morality in that our tolerance has changed with time and location. Gambling, prostitution, pornography, alcohol, and drugs are described by some people as 'victimless' crimes because they may involve voluntary conduct on the part of producer and consumer, yet all have been regulated by criminal laws. These laws are needed especially where the prostitute and the children who are subjects of child pornography are being forced to participate and have not consented. Morality is about knowing right from wrong and ethics is acting on our moral compass.

Our moral compass develops as we age and acquire new knowledge and experiences that shape what we view as right or wrong conduct. Family, friends, religion, society, teachers and popular media each have an impact on the development of our moral compass. The difficulty in basing criminal laws on moral standards is that society cannot always find agreement on the standards used to determine right and wrong, good or bad. This leads to moral relativism, meaning that our view of right and wrong shifts relative to time, place and our personal value system.

One hundred years ago, people thought nothing of executing criminals for crimes less serious than murder; now the death penalty has been abolished in Canada.

The decriminalization of narcotics, same-sex marriage, stem cell research or casino gambling are current issues that trigger strong but divergent reactions by many Canadians. It is the challenge of the criminal law to represent the shifting sands of our moral framework with enduring moral standards that should not rest on a time or place.

Over 50 years ago an important debate took place in England between opposing sides on the criminality of prostitution and homosexuality. The *Wolfenden Report* (1957) was produced for a parliamentary committee to examine the issue and in doing so opened a debate on public vs. private morality. The report's major recommendations made headlines; one such recommendation stated that homosexual behavior in private between consenting adults should no longer be classed as a crime.

In its findings the report stated that the criminal law should be used to “*preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are vulnerable...*”

(Dyzenhaus and Ripstein, 2001, p.309)

The *Wolfenden Report* spurred public debate and eventually led to a change in the laws of England. Lord Patrick Devlin, a famous British judge, disagreed with the report’s conclusion. He argued that popular morality should be allowed to influence lawmaking and that even private acts should be subject to legal sanction if they were held to be morally unacceptable by the “reasonable man”... in order to preserve the moral fabric of society. The will of the majority would carry more weight than the measured reflection on common moral principles like equality.

The debate led to a change in English law in the 1960s and highlights the importance of understanding the role of the state in regulating our private lives.

After reading *The Wolfenden Report* (1957) complete the activities outlined below.

### **Gut Check**

Complete a free write outlining your view on the question of public vs. private morality. Do you agree that the state (government of Canada) has a right to regulate your conduct while in private (home, bedroom, internet)? In a free write you need not worry so much about writing structure but the work must be coherent and express a clear point of view.

### **Continuum Debate**

Your teacher will guide you through this informal type of debate. Each student has written out basic views on the issue of public vs. private morality and now it is time to express them publicly. You will be asked to stand at one point of a continuum of views on the topic - think of it as a single line with each point (student) representing a view and at either end of the line you have the extremes. Prepare your view because you will be asked to express it and provide reasons as the teacher works up or down the line. After listening to other viewpoints you are free to adjust your position toward one end of the line or the other. The line is a visual representation of the views held by the class with extreme views at each end and those with mixed views sitting more toward the centre.

*Debate Question: Does the state have the right to regulate private conduct of its citizens?*

### **Read, Reflect and Write**

Read the quote from *The Wolfenden Report* (1957) once again and reflect on its meaning. Write out a brief summary of what this means in the context of Canadian criminal law. Choose a topic like narcotics production or use, prostitution or internet gambling and make an argument for or against criminalizing this type of conduct. Consider the public or private nature of the activity, harm caused to society, harm caused to individuals, societal values and your moral compass when making the argument. Prepare to present your topic and response for next class.

