

DEBATE BETWEEN LORD DEVLIN AND PROFESSOR H.L.A. HART

1. The Wolfenden Report also attracted much public debate.
2. One well-known set of exchanges was the debate between **Lord Devlin**, a highly-regarded judge, and **Professor H.L.A. Hart**, a leading jurisprudential scholar, between 1959 and 1965.
3. The debate between Lord Devlin and Professor Hart centred around the relationship between law and morality: should immorality be a crime?
4. Lord Devlin took issue with the Wolfenden Committee's broader conclusion that the law should not enforce morality.
 - a. He advocated the idea of a "shared morality". He said that the law must reinforce societal moral norms to keep societies from disintegrating.
 - b. When a behaviour reaches the limits of "intolerance, indignation and disgust" of what a reasonable man, or society as a whole, considers immoral, the State ought to legislate.
 - c. But at the same time, Lord Devlin also caveated that he was not equating all sins with crime. He emphasised that the law should be concerned with the minimum, and not with the maximum, of morality.
 - d. There must be toleration of the *maximum* individual freedom that is consistent with the integrity of society, and nothing should be punished by the law that did not lie beyond the limits of tolerance.
 - e. It would not be enough to say that a majority dislikes a practice, and therefore the law should step in. There would need to be a real feeling of condemnation.
5. Lord Devlin said the question should be whether homosexuality is a vice so abominable that its mere presence is an offence, or whether we simply feel that, if confined, it is tolerable.
 - a. If it is the latter, it then becomes a question of balance – the danger to society, on one end of the scale, and the extent of the restriction, on the other.
6. Professor Hart disagreed with Lord Devlin.

- a. To Professor Hart, it was absurd to suggest that every practice that the society viewed as profoundly immoral and disgusting threatened its survival, and therefore should be legislated.
 - b. Professor Hart disagreed with Lord Devlin that moral values could be regulated simply because they are widely held.
 - c. He argued that enforcing a moral code would unduly interfere with individual liberty, and curtail the evolution of society.
 - d. Professor Hart advocated the "Harm Principle": in his view, criminal laws should not be based on popular moral consensus, but on whether harm was caused.
7. Notwithstanding their disagreements, they were agreed on one thing: the State should be cautious about using law to regulate morality.