Noah Edward Hall

Philosophy, Tuesday 7pm BH 1

Writing Assignment 1

The Private Criminal, the Private Law

Patrick Devlin claims, via his “Disintigrating” theory, that destroying an immoral society is morally superior than allowing it to exist. Thus, the law should (and is) justified for seeking criminal prosecution of those who are immoral because their immorality threatens society – just as treason.

H.L.A. Hart refutes Lord Devlin’s theory, based on the proposition that “we cannot condemn what we disapprove, just because we disapprove it” and that there needs to be “empirical evidence” that sin has produced a crime. Also, by criminalizing immorality, which in most cases does no harm to others, is an act that requires justification. Hart’s position is that to criminalize immorality, there must be empirical evidence, in which immorality in and of itself does not produce. Hart goes a step further and says even in those cases where the law technically can criminalize immorality, there must be proof of immorality (and ***private*** sexual relations does not produce ***public*** proof).

There were two decisions presented to support Hart’s position, both stemming from the Wolfdenden Committee’s 1954 report stating:

* Homosexual acts between consenting adults in private should not be a crime
* Prostitution can be criminalized only for the sake of removing it from the public streets due to the ‘nuisance’ it causes to ordinary citizens – but not criminalize prostitution in and of itself.