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Wolfenden Plan on Homosexuality, rejected by Scottish Assembly

(from: *Manchester Guardian, Manchester*)

Dr. Davidson told the Assembly that homosexual conduct was «so essentially an unnatural vice and so obviously injurious to the social welfare of any community» that it requires special legislation. The present law reflected the «extremely wide disapproval and the rank abhorrence» in which such conduct was held.

To approve the Wolfenden Committee's recommendation would be regarded as condoning such behaviour at a time when there was in many quarters «a dangerous tendency to blur the distinction between right and wrong behaviour.» At the same time, the committee urged «a more compassionate and understanding attitude» towards the homosexual who was «afflicted with a constitutional abnormality that was nothing less than a tragedy.»

The Rev. G.T.H. Reid moved an amendment directly reversing the committee's motion by inviting the Assembly to support the Wolfenden committee's recommendation. Mr Reid has red hair and a blazing passion for logic and justice. Both played their part on his impact on the audience.

In considering homosexual behaviour, he said, people tended to be at the mercy of the intense feelings of repugnance it aroused in the normal man. The whole field of sexual behaviour aroused strong prejudices. It was not long since good church people were «shrieking protests» against homes for unmarried mothers and their children on precisely the same grounds as were advanced by the committee—that they would encourage vice. There was no moral element involved in a man's being homosexual and there was no known cure for his condition.

It was a matter of arrested sexual development, he continued, not the result of moral depravity. It was «fantastic» that the sins of the heterosexual should go unpunished, while the homosexual was liable to life imprisonment. Adultery was once a criminal offence in Scotland, but nobody thought the law condoned adultery because that was no longer so.

It was a «dreadful argument» that the present law, even though it operated unjustly against homosexuals, should be retained «to protect society.» The first function of a law was not to protect society against any element within it but to defend society against injustice. While it might be right for the law to keep in step with public opinion, it was not for the Church to wait upon the general moral sense of the community but to lead it.

Professor J. Pitt-Watson, seconding, thought the harm done to society by homosexual behaviour could «not begin to compete with its trail of broken hearts and broken homes and its disastrous effect on children.»

Mr. Reid's amendment was defeated by a sizeable but far from overwhelming majority, and the Assembly approved its committee's recommendation.

Morals and Politics: A Year after Wolfenden

(from: *Daily Telegraph, London*)

Controversy aroused by the Wolfenden Report on Homosexual Offences and Prostitution has by no means died down. While the Government is still being

urged, by loud and contradictory voices, to do something, it has not escaped criticism for doing nothing.

No Government ever enjoys embarking on moral and social legislation of this kind. Opinion concerning it is never divided neatly along party lines, and loyal supporters may be alienated. Any positive action is bound to be hotly contested, and compromise may please only a small and unvocal minority.

In this case, Mr. Butler's policy has been a bland «Wait and see.» It has earned him accusations of timidity by many, on both sides of the dispute, who now believe that they will have to wait and not see.

What in fact could the Government still do? Lord Kilmuir has already told the House of Lords that there can be no prospect of early legislation on the Committee's recommendation to legalise homosexual behaviour in private between consenting adults. Neither the Government nor the majority of Conservative M.P.s believe that the general sense of the community is with the Committee here.

That means there will be no Bill seeking to implement the full Report. A Bill dealing with prostitution only might please those who, like Mr. W. J. Edwards, M.P. for Stepney, are much concerned about the present situation and demand immediate action. But it would be clumsy, for the Government would have effectually prevented the House of Commons from discussing the most controversial clauses of the Report. Their exclusion from the text of the Bill would render discussion out of order.

What the Government would like to ensure, before the end of its term of office, is full discussion of the whole Report by the House of Commons, with legislation only on the recommendations concerning prostitutes. Parliamentary procedure and Rules of Order make these two aims difficult to combine.

In whatever way it may solve the problem—whether by itself sponsoring, or allowing Government time for, either a Motion or a Bill—it will lose some prestige if it carries caution to the point of complete inaction. It should not be beyond the wit of so experienced and astute a Parliamentarian as Mr. Butler to find the appropriate procedural formula. His difficulties as Home Secretary may in this case be offset by his opportunities as Leader of the House.

What guidance will the House get from the unofficial debate which the year has produced? Because the Press, radio, television, and public and private discussion of all kinds have concentrated largely on the clauses relating to homosexuality, it has come to be assumed that those relating to prostitution are uncontroversial. That is by no means the case.

When we turn to homosexuality, we find a battle of Titans, religious, legal, medical and sociological. Some of the points made by the supporters of the Wolfenden Committee's recommendation may be conceded at once. There are grave anomalies in the present laws as they stand. The legislation which it is proposed to revoke (Section 11 of the Criminal Law Amendment Act, 1885), is of comparatively recent origin, and has been severely criticised on three grounds:

- (a) That the provisions introduced an entirely new principle in English law in that they took cognisance of the private acts of consenting parties:
- (b) That they were inserted into a Bill introduced for totally different purposes without adequate consideration by Parliament; and
- (c) That they created a particularly fruitful field for blackmail.

Opponents maintain, however, that to abrogate the law would have a disastrous effect on the morals of the nation. It is one thing, they continue, to

leave an existing situation alone—no one, for instance, is proposing to impose penalties on lesbians—but it is quite another to revise it by means which seem to give State sanction to conduct which is morally reprehensible, whether it is punished or not.

The controversy, which ranges over the whole field from abstract justice to plain facts and consequences, from the history of Greece and the later Roman Empire to that of modern European countries, cannot be easily summarised. Only one thing is certain. It is still being fought, and fought with much emotion on both sides.

Does all this mean that the Wolfenden Committee has been wasting public time and money? Certainly not. Its members were wisely selected. They called their evidence with comprehensive care. They have produced, with reservations among their own number, the most logical and the most humane report ever offered to the State on these difficult subjects.

Does that in turn, mean that the State is wrong not to act on their conclusions immediately? Again, certainly not.

As Lord Denning said nearly a year ago: «Without religion there can be no morality, and without morality there can be no law.» But the nation is seriously divided on both religion and morality, and the Government takes its mandate from the nation. That is what makes it so difficult to decide whether a Government should lead or follow public opinion in these matters.

In considering the Wolfenden Report it is not unreasonable for the Home Secretary to remember the impasse on capital punishment, out of which his predecessor extricated himself with such difficulty—and, as many have suggested, with so little general satisfaction.

Even if we assume that in moral legislation the Government should lead the nation rather than wait for an unequivocal mandate which it will certainly never get, what reason is there to believe that the Cabinet is itself unanimous on the Wolfenden Report? It is more than probable that the controversies which have divided the nation reproduce themselves in the Cabinet room.

The only solution which recommends itself to me is one which I have discussed with two distinguished public servants. It is that when Parliament passes moral legislation, it should do so with a time limit of 25 years. It would then become compulsory for both Lords and Commons to reconsider all Acts of this kind at stated periods, and no Government would have to spin a coin to decide whether a Bill would bring it more odium than prestige.

The limiting clause could be so framed as not to prevent earlier reconsideration of a thoroughly unsatisfactory Act. A lower time limit would run the risk of forcing too much routine work on the already overloaded House of Commons.

This 25-year provision would allow quietly and unobtrusively, for the reconsideration of such perennial irritations as the Lord Chamberlain's censorship of play and the Lord's Day Observance Acts. It would give the Silvermans of another generation peace in their time, and allow Home Secretaries to sleep at nights.

Would it put a stop to all Royal Commissions, or to such committees as that presided over by Sir John Wolfenden? I think not; for good, sound and thankless work of this kind must always be done by someone. At least men like Sir John and his colleagues would not have to ask themselves, as now they well may: «Has my work been tried and found wanting, or found difficult and never tried?»

„der neue ring“

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Deutschland: Gesellschaft für Reform des Sexualrechts e. V., Grunewaldstrasse 78/1, Berlin-Schöneberg.

Int. Freundschaftsloge (IFLO) Postfach 1399, Bremen.

Organ: IFLO-Bundesbrief.

Verein für humanitäre Lebensgestaltung (VhL), Kettenhofweg 46, Frankfurt a. M.

Dänemark: Forbundet af 1948, Postbox 1023, Kopenhagen K. Organ: PAN.

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Amsterdam C. Central-Büro: Damrak 57, Tel. 34596. Organ: Vriendschap.

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