

Law and morality can't be separated

BY RICHARD BASTIEN

The Supreme Court of Canada recently concluded, in a 7-2 ruling, that clubs featuring group sex and partner-swapping do not harm Canadian society and should not be considered criminal. Writing for the majority, Chief Justice Beverley McLachlin justified this decision by noting that "over time, courts increasingly came to recognize that morals and taste were subjective, arbitrary and unworkable in the criminal context. ..."

In making this statement, Chief Justice McLachlin has in effect declared that one of the basic principles underpinning the Canadian legal system is that the law should not be used to enforce morality. In other words, enacted laws should be morally neutral.

This is not only wrong, it is absurd. It is impossible to conceive of any law that does not have a moral basis. Even a bad law has a moral basis; that is, it is based on false morality.

One cannot imagine a law that does not have some kind of moral rationale. For example, the law that imposes gasoline taxes is based on the notion that people who drive around town should in some way pay for doing so. The law that provides for our progressive income-tax system assumes that some people ought to pay proportionately more for government services accessible to all. The law that sets speed limits is based on the moral idea that we need to be concerned about the safety of other people on the roads.

The judgment rendered by Chief Justice McLachlin is flawed not only because it suggests that laws can be devoid of any moral basis but, more im-

portantly, because it is inherently inconsistent. People who insist on upholding the concept of moral neutralism (that is, the notion that there are no universal objective moral standards by which our behaviour can be judged) are themselves non-neutral.

It is logically impossible to commit to neutralism without committing to a particular value, whether it is social peace, tolerance, multiculturalism, individualism, and so on. Any such commitment entails a violation of neutralism.

This points to an even deeper problem, which is that there can be no such thing as moral neutrality. The problem is not that neutralism is something difficult to achieve. The problem is that it is unachievable. And it is unachievable because it is inconceivable. It is simply impossible to make statements about social life without expressing some kind of preference about the criteria that should govern such life. In short, neutralism is for cranks.

Does that mean that, insofar as morality and the law are concerned, there is no choice other than being either a fool or a bigot? The answer is no, subject to two provisos: (a) enacted laws should be based on an objective moral order; (b) the law should enforce morality only when the public interest is at stake.

The origin of enacted laws is the natural moral law, a concept that was first developed by Roman legal scholars long before Christianity appeared. It is a non-sectarian defence of objective, universal moral principles. Judges can make decisions based on natural law because it is sustainable independently of any religious or philosophical argument. To refrain from

killing, stealing or raping women is not the expression of a "subjective, arbitrary and unworkable" preference, but a universal, objective moral truth easily understood by people of all cultural backgrounds.

Chief Justice McLachlin and like thinkers would respond that the real issue is whether private acts, such as group sex between consenting adults, are harmful to society. The answer is that sex is both a private and a public matter. Our sexuality is meant to bond men and women and to create new life. And the bonding and the creation of new life cannot be separated.

Marriage and the family are natural institutions through which human beings are created, nurtured, educated and socialized. We first learn to interact with others through our parents and our siblings. Only after that first stage do we learn to interact in society. And social scientists keep reminding us that, failing the proper family environment, kids are less prone to be socially responsible.

The upshot is that we need stable marriages and families, not because the Church says so, but because they are vital to the future of a healthy society.

One cannot deny that enacted laws have a moral grounding without tacitly denying that there exists a natural law. If we believe that law is a pure invention of human minds, then what we have traditionally called justice is sheer arbitrariness. And every man and woman knows deep in his or her heart that cannot be so.

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