

## **Can We Legislate Morality?**

by Johan D. Tangelder.

Times have changed. Canada is now a pluralistic, secular, post-Christian, society with people of many different religious persuasions. Relativism, cynicism, hedonism, and overt materialism are rampant. The notion of normative truth, good and evil, universal absolute norms for morality are no longer foundational in Canada. How can Reformed Christians address policies that govern moral issues in a nation that has lost its bearings? Traditionally 'police powers' of the government extended to the protection of public health, safety, *and morals*. Typical forms of moral legislation prohibited or restricted prostitution, pornography, and other forms of sexual vice, as well as gambling and the recreational use of drugs. In recent times, this kind of legislation has come under severe attack by liberalism. It contends that morality cannot be legislated. How can the government enact and enforce moral laws in a free society? No one can force people to be good. In a liberal society freedom is supreme; no ego may be offended or restricted and most certainly not restricted by moral judgment. The latter is discredited as 'judgmentalism.' We're asked, "Who are you to tell me what to do?" Others tell us, "We must live and let live," and "True liberty is to create one's own values and morality." They even insist, "What one may think as moral is an immoral act for another." Who is right? Don't we have the responsibility to decide for ourselves what is right or wrong?

### **Private morality.**

How can we determine what is legal when law is simply seen as one area that evolves without any reference to God - the Supreme Lawgiver? Only in the waning decades of the twentieth century has the Christian heritage of Canada's law system been almost forgotten or ignored. This loss is detrimental for the well being of our nation. When the Christian roots of the law are cut off, law ultimately loses its authority and vitality. In other words, the place of God in our nation and law is the fundamental question for our nation. Liberals tend to follow British philosopher John Stuart Mill (1806-73). Since the publication of his essay *On Liberty* many have come to conceive of liberty strictly in individual terms.

The individual is supreme. Through the influence of J.S. Mill law is viewed as essentially public, whereas morality has large private areas into which the law can intrude only by violating individual rights and freedoms. For example, sexuality has been designated as a private affair. The only legal concerns in this area should be those of harm and consent. An amendment to Canada's Criminal Code implements the government's view as of 1968 "that the government has no place in the bedrooms of the nation."

The secularization of our nation is seen in recent decisions of the courts on moral issues. The Chief Justice of the Supreme Court of Canada declared that Canada is a secular nation. Religion and morality are strictly private matters. If the individual's choices are supreme and freed from the supervision of law in private life, where are the limits? Someone raised the question whether or not those who make a clear distinction between public and private morality believe that murder between consenting adults "in private" is permitted. A thought provoking question! Of course, this strict distinction between private and public morals does not make much sense. How can we separate private life from public life? I am baffled by politicians who recite the words of the Apostles' Creed, "I believe in God the Father almighty. Maker of heaven and earth," while ignoring the Almighty's revealed will for every sphere of life. When we believe that God, the Father of our Lord Jesus Christ, still upholds and rules heaven and earth by his eternal counsel and providence then life cannot be divided into private and public spheres of activity (Heidelberg Catechism, Lord's Day 9). In private as well as in public life we are responsible to God and to our fellowmen.

### **Secular Views.**

Who decides what is moral? Dr. Robert Butcher, Professor of Philosophy at Brescia College, University of Western Ontario, London, says moral questions cannot be answered by any reference to any particular religion or community of faith. He claims that it is the task of all of us to search for the best moral decisions and then to implement them impartially and with fairness. Dr. Will Kymlicka, Philosophy Professor at both Carleton University and the University of Ottawa, argues that the right many "religious" parents claim to have - to educate their children in their particular religious doctrine - is neither morally defensible nor should it be upheld by the State. On what basis does Kymlicka pontificate what is not "morally defensible?" He is obviously biased against Christian education. He advocates,

therefore, that the government supports only public schools. Provincial Court Judge Ken Halverson declared that reciting the Lord's Prayer in Saskatchewan's public schools discriminates against minorities. In his written judgment he slammed the Saskatoon Public School Board for "the evils of allowing individual teachers to decide" and for its "antiquated thinking." What grounds does the judge have for using the words evil and antiquated?

### **Imposing Morality.**

We are dominated by the liberal dogma that we may not impose our moral values on other people. Christians especially are told that they may not force upon society their moral views. What gives? I am thinking of the sanctimonious-moralistic-anti-smoking crusade. I don't smoke. I am allergic to smoke. I also believe that the world would be a better place if nobody smoked. But on what basis can society make a moral appeal against smoking? Why do we have city bylaws prohibiting smoking in public buildings? In other words, there is no escape from the imposition of morality. The notion that morality cannot be legislated overlooks the fact that almost all legislation concerns moral action. Virtually every area of human affairs is controlled and regulated by law. Punishing theft is a moral judgment. In Canada selling child pornography is illegal, merely possessing it is not, according to the Charter of Rights. Taxes involve the imposition of moral judgment. Through our taxes the government funds almost willingly art that seeks to undermine our Christian heritage. In Toronto, the overtly homosexual theater group, *Buddies in Bad Time*, receives government funding to promote the cast's decadent message. Hate crimes, flag desecration, and affirmative action are all moral judgments. Both federal and provincial governments increasingly intrude in trade, science, the arts, finances, family life, and education. However, in certain areas the government has surrendered control. Consequently, in the matters of obscenity, abortion, homosexuality, possession and trafficking of "soft" drugs, etc., Canadian citizens can now act with impudence to the dictates of their individual morality. The question, therefore, is not "Can we legislate morality?" The question is: "Whose morality do we legislate?"

### **Law and Social Change.**

What is the purpose of law? A major source of difficulty is the tension that often exists between legal and moral rules. What should be done when a law violates one's conscience? How does one relate law to morality? Who should protect our civil liberties? Parliament? The Courts? There is no neutrality as to the nature and purpose of law. The legal process in Canada is influenced by distinct schools of thought. Gerald L. Gall observed in *The Canadian Legal System* that the particular philosophy of law will affect the way in which some judges judge, a prosecutor prosecutes, a lawyer defends or advocates, and the way in which every citizen views the law and the legal system. Some legal theorists claim that law is a dynamic affair, an instrument for achieving social welfare and not an end to itself, and may therefore be changed whenever necessary. Since the 1982 entrenchment of the Charter of Rights and Freedoms in Canadian law, Parliament lost its supremacy. The freedoms enunciated in the Charter became the supreme law of the land. Judicial activism was introduced. The Supreme Court judges began to administer and give meaning to the Charter. We are now ruled by unelected judges. Judges no longer ask, "Is this what Parliament intended?" but rather, "did Parliament act within the Charter?" The Supreme Court judges believe that they must consider what is expedient for the community. The source of the law is not the state, but the moral conscience of the community. If the legislators or the judiciary fails to express the community's sense of right then the law becomes null and void. Therefore, what may be law today is not necessarily law tomorrow. In other words, the law has become a vehicle for social engineering.

Dr. Ian Hunter, Professor of Law emeritus, London, Ontario, notes that Canada's Supreme Court judgments have become, in many cases, a random collection of the judges' personal and ideological predilections. The Supreme Court's ruling on abortion is a clear example. On January 28, 1988, it struck down Canada's abortion law. According to Chief Justice Dickson, the existing laws were a profound interference with "a woman's bodily integrity in both a physical and emotional sense." He concluded that, "Forcing a woman, by threat of criminal sanctions, to carry a fetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body." Since the immoral and shameful decision of the Supreme Court, Canada has been unique among the nations in the Western world in having no law on abortion. Abortion on demand

became an ugly reality. The pro-abortion lobby won and the unborn lost. What were the grounds given for the pro-abortion ruling? The liberal view of law as an instrument of social engineering was plainly evident. Dr. Hunter observed that the feminist wing of the Supreme Court, led by Madame Justice Bertha Wilson, had developed an explicit ideology. In her judgement in *Regina v. Morgentaler*, she wondered if men were capable of understanding abortion or were even qualified to express an opinion on it. But abortion is not a “mere” legal issue, it is always a moral issue. The wrongness of abortion follows from the truth that life is a loan from God (Luke 12: 20) and belongs to Him. When does life begin? Jeremiah 1:5 speaks of the consecration of the prophet before he was born. The Gospel of Luke describes how the unborn baby in Elizabeth’s womb leaped for joy at Mary’s greeting (1:41). The life of each human being - from conception to natural death - is unique. Unborn children are fashioned in the image of God. Why is a woman considered a person and not an unborn child? And if an unborn child is not a person, why should the Supreme Court not decide that a week old or a seventy-year-old is not a person? A frightening but a realistic possibility.

The Supreme Court imposed an immoral ruling. The absence of an abortion law is a moral statement. Legalizing abortion reveals the moral decadence of our nation. This point was made by the Canadian philosopher George Grant in his response to the striking down of the abortion law. Grant was filled with righteous indignation. He contended that the lack of legal protection of unborn children was another step taken in the decay of the liberal tradition of justice. In his essay *The Triumph of the Will* (1988), Grant compares the philosophical basis for the pro-abortion movement to the same element that drove the Nazis. He wrote:

National Socialist ideology was impregnated at its heart in Darwinian biology. In terms of such an account of life, why should we care about the life of a fetus when it conflicts with the will of a fully developed woman? But then, of course, we are led inexorably to the next stage. Why should we care about the lives of human beings outside the womb if they are only an accidental conglomeration of cells, and if they stand in our way? ... Those who see life simply as a product of necessity and chance are inevitably more open to feticide, because they do not see the destiny to which human beings are called. This is the prodigious predicament that the intellectual triumph of modern science has cast upon human

beings.

Grant was right. Canadians are slowly and subtly being conditioned into legalizing euthanasia. The first steps toward legalizing euthanasia have already been taken. In 1994 the tragic case of Sue Rodriguez, a forty-two-year-old woman who suffered from Lou Gehrig's disease, brought Canada close to legalizing euthanasia. In the reasons for their ruling the Supreme Court showed no deference to Parliament, the representatives of the Canadian populace.

### **The Task of the Government.**

Can we legislate morality? The answer to that question depends on whether or not we are willing to practice our faith. Are we ready to give public expression of what we know is right and wrong, good and evil? If we are not ready, we are forsaking our calling. We must call upon the government to affirm in law the sanctity of human life. It has a God given duty to do so. The government is the servant of God. In this capacity it should promote peace, justice, and protect the sanctity of life. The Belgic Confession gives us a clear insight concerning this task of the government as God's servant.

“We believe that God ...wants the world to be governed by laws and policies so that human lawlessness may be restrained and that everything may be conducted in good order among human beings. For that purpose he has placed the sword in the hands of the government, to punish evil people and protect the good.”

In our pluralistic society Christians have the same rights as liberals to promote their view of morality. Why let secular judicial activists impose their views without Christian public political opposition? Some Christian members of parliament believe that they can make a difference for life in their particular parties. I have not seen that difference as yet. In our parliamentary system it is extremely difficult for a private member to introduce a pro-life bill and expect action on it. So far the Christian Heritage Party is the only Canadian federal party to officially and actively promote the enactment of pro-life laws. Its policy book states:

We favor the elimination of all public funding of organizations that advocate abortion. Abortion is the deliberate killing of an innocent human being, and therefore is a crime against God, the pre-born child, the mother and father, and society. It should be treated as such by the Government and must not be permitted or supported.”

The government has the duty to protect each life from conception to natural death. Moral standards can be legislated. As Christians we should encourage one another and our fellow citizens to reject abortion and work for a ban on abortions. Such a ban has worked in our country for years. Our goal is to save lives. This is the Christian’s moral choice.