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innocence will be horribly distorted. Williams uses the word 'innocent' to describe social arrangements based on myths like divine law or feminine inferiority. But despite this rhetorical flourish, he does not see their passing as a matter for regret. Above all, he does not think we should try to return to our old state. Ignorance is innocent, but self-deceit is not. Transparency is now a universal condition for systems of ethics, but its force is not that of logic, only of history.

Williams' position has implications for the twentieth century question of the nature of moral argument. He thinks Wittgenstein's notion of a form of life is useful, though rather abstract. Much moral argument is relative to a shared way of life, and can be simply incomprehensible to someone who has never lived in that way. Williams also rejects the idea that there is a sharp line between argument and persuasion. Hare thinks this parallels the distinction between freedom and coercion, but Williams disagrees. Persuasion is not usually coercion, because it is not one sided. When we try to persuade someone we are as much dependent on their beliefs and feelings as our own. Persuasion, says Williams, is more like seduction than rape. He sees moral argument as 'rational persuasion'. When we say "Just think what it's like to be him", we are appealing to imagination and sympathy, as well as to reason. To respond to moral arguments we need virtuous dispositions as well as intelligence.

Williams is a believer in the value of equality and active social justice. These values have always been favoured by the rationalist approach, because of its commitment to ideas like universability. But the aristotelian approach is notably short of arguments for radical social change. This is a truism about Aristotle himself, but Williams thinks it true of the whole approach. One of Williams' most interesting aims as a moral philosopher is to give an account of the values of radical social justice on an aristotelian model.

Bernard Williams has been Knightbridge Professor of Philosophy, chaired the Royal Commission on pornography, and is Provost of King's.

MORALS AND THE CRIMINAL LAW.

A comment by Jeremy D. Weinstein, Trinity Hall.

The twentieth century has given us the definitive acid test of jurisprudential theory. This test consists of the application of theory X as it defines law and legal system to Nazi "legality". It is one thing for a theory to look all neat and cosy snuggled between the hard covers of a textbook, it is another thing for the theory to maintain a semblance of reasonable, humanitarian concern for people living under the "law" when its analysis of law is applied to the most monstrous crime of human history. What is the legal status of the Nuremburg Laws? How does one assess the conduct of officials enforcing these laws? How "legal" are the acts of doctors who were acting under laws authorising experiments on humans? What is the position of those who obeyed orders under the "law" to exterminate and/or torture Jews, Communists, Catholics, enemies of the Reich, homosexuals gypsies and Jehovah's Witnesses? Infinitely more questions can and should be asked of the conduct under "law" of citizens and officials in Nazi Germany. A theory of law, legality and legal systems must produce satisfactory answers to these questions if it is to pass the proposed "acid test". At the very

least it must refrain from stating that the more criminal aspects of the Nazi regime are legally proper.

One famous jurisprudential theory about the relationship between morals and the Criminal Law, that propounded by Lord Devlin, fails the acid test. In 1957 the Wolfenden Committee produced its recommendations for reforming some serious inequities in the English Law and, among other things, advised the legalisation of homosexual acts, performed in private, between consenting male adults. (Lesbianism had never been a crime.) Devlin countered with an essay (which has been republished in "The Philosophy of Law", Dworkin ed.) entitled "Morals and the Criminal Law". In it he argued that society has the right to pass judgement on all matters of morals; since a shared morality is as essential to a society as a shared government, society has the right to use the law to enforce that shared morality. A common morality, in Devlin's view is the bond that holds a society together. Society has the right to use the law to maintain this shared morality. "If society has the right to make judgements and has it on the basis that a recognised morality is as necessary to society as...a recognised government, then society may use the law to preserve morality in the same way it uses it to safeguard anything else that is essential to its existence."

Of course, some shared morality is essential to the existence of a society, and is in fact arguably part of the definition of a society. But not everything which incites "intolerance, indignation and disgust" in the man in the street, which is Devlin's criterion for determining what is definitely not part of society's shared morality, is of equal importance to society. This argument is developed by H. L. A. Hart in his "Morality and Treason" (also reprinted in "The Philosophy of Law", Dworkin ed.), to which the reader is referred.

Devlin's procedural definition of morality, the gut-level reaction of the reasonable, but not reasoning, man, clearly creates potential for abuse. How is this shared morality of society to be discovered? Devlin rules out public opinion polls and suggests the jury box. But the judge restricts the jury. So this procedure gives the state much control over the common, shared morality essential for society that is discovered and given legal effect. The greater damage, however, is what occurs to the man in the street before he gets to the jury box. If he is to be encouraged to allow his powers of reasoning to atrophy when considering matters moral, to what extent may his opinion legitimately be shaped by government propoganda? If the government mounted a concerted campaign to breed in the public reactions of "intolerance, indignation and disgust" when confronted with the idea of sexual congress between Gentiles and Jews, how right would it be for a jury to convict a man for such an offence? Procedurally, the state is the only judge of society's ^{morals} that matters.

The danger and potential for perversion (if that is what it really is) of Devlin's views can be seen by the application of Devlin's own words to an all-too-familiar historical example. He says "it is not possible to set theoretical limits to the power of the state to legislate against morality". Now that the German man-in-the-street was deemed by the legislative authority to think of sexual congress with Jews with "intolerance, indignation and disgust" it became, by Devlin's reasoning, the duty of the state to legislate to illegalise it in order to protect the shared morality which is essential to the existence of the society. On September 15, 1935, "The Blood Protection Act" (Gesetz zum Schutze des Deutschen Blutes und der Deutschen Ehre), commonly known as "The Nuremburg Laws", was passed. This Act prohibited marriage and extra-marital relations "between Jews and nationals of German or allied blood" in the interests of the so-called "survival of the German race". And the provision that no Jew might "employ a female national of German or allied blood under forty-five years of age...in his household" was designed to enforce this. People were convicted by judges

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and juries, imprisoned and executed under these laws. The morality of society had been legislated, and was enforced by the state, all in keeping with Lord Devlin's sagacious advice.

Devlin's theory about the role of morality in the law is dangerously deficient when it comes to determining that morality, both in the method and mechanism by which that morality is to be determined, and in those "men on the Clapham omnibus" from whom it is to be determined. Although Devlin might personally find it repugnant, by his analysis, there is nothing wrong with The Nuremburg Laws.

The failure of Devlin's or another's jurisprudential theories to detect the faults of the Nazi system, does not speak for the flawlessness of Nazi legality, but for the impotence of the theories themselves. If a theory can't put evil in its proper place, then that theory is collaborationist.

"NOT FREEDOM, BUT CONGENIAL GOVERNMENT"

Roger Scruton and the New Conservative Philosophers.

By Jennifer Clarkson, Birkbeck College, University of London.

The received political wisdom of our time for anyone who considers themselves to be part of the intelligentsia, has been overwhelmingly liberal and left, socialist and libertarian.

So when Roger Scruton (Reader in Philosophy, Birkbeck College, University of London) writes in, amongst other places, a regular column in the Times, that he is anti-feminist; pro-hanging; against social justice; CND and individuality; then outraged fur and feathers are bound to start flying. Particularly if the existence of a Conservative Philosophy Group is "discovered"; and discovered to be attended by real politicians, including Mrs. Thatcher herself! Not only that, but a new magazine of conservative thought, The Salisbury Review, hits the streets with just a bit of a flourish.

Who thinks for Mrs. Thatcher? the Times demanded in January; and described "secret battles for the Prime Minister's mind". In March the Guardian published an article on "the new Tory philosophers", thoughtfully entitled "The Unthinkable Men Behind Mrs. Thatcher". Peregrine Worsthorne asked (rhetorically) in the Spectator whether there is another Cliveden set myth in the making; and a journalist in the Guardian, reviewing the first issue of the Salisbury Review, made much of the colour of Dr. Scruton's hair and the shape of his spectacles. Dr. Scruton's voice was heard addressing the nation one Saturday on Radio 4's "Stop the Week".

Contagious journalistic excesses aside, I think that there does seem to be in existence an active group of conservative philosophers, whose most visible member is Dr. Roger Scruton and who are trying to get their views heard, and, presumably adopted.

So, mindful of Voltaire's declaration, I thought that the least we could do is to take a look, not at the colour of the hair, but at the opinions of the young (well, my age, anyway), Dr. Scruton.

These are most accessibly set out in his book "the Meaning of Conservatism"; and neatly and concisely expressed in his "Dictionary of Political Thought".

(Mind you, it's not exactly easy, these days to be seen walking around Cambridge with a book on conservatism. I received such a quantity