

TEXTE RICHARD WOLLHEIM

But, I suggest, both the right of society to preserve itself and the argument that would derive this right from society's mere existence seem plausible and are acceptable only when "self-preservation" is understood in a far narrower sense than that in which it figures in Devlin's argument. For whereas in the popular understanding, self-preservation is contrasted with destruction or decay, Devlin contrasts it with change itself and makes no distinction between different kinds of change. Against corruption and against amelioration alike society is entitled to invoke the right to preserve itself. The moral identity of a democratic society is threatened by storm-troopers; the moral identity of a cannibal society is threatened by missionaries; the moral identity of Franco's Spain is threatened by Protestant bible-pedlars. If we argue with Devlin, we must concede that in all these cases the moral right of society to suppress those who would "subvert" it enjoys the same standing. Now, I doubt if this is what is meant by most of those who ordinarily talk of, and accept, society's right of self-preservation.

But even if we accept the right of self-preservation in this extended sense, it is by no means clear that it follows from it and the fact that society's morality is essential to its existence, that society has a right to enforce its morality. What *does* follow is that society has a right to preserve its morality. But are the enforcement and the preservation of morality one and the same thing? It is obvious that they are not. It is, for instance, arguable that a morality, if enforced, ceases to be respected, and once it loses respect its existence is in danger. And, again, it can be argued that for a code of morals to preserve respect, it must sometimes be broken, and if it is rigorously enforced it runs the risk of never being broken. Historical examples confirm this abstract reasoning. Sumptuary laws may provide a reasonable system of taxation, but they have done little to inculcate a moral aversion to waste and extravagance; and the relation between Prohibition and Temperance has been the inverse of that desired by reformers.

Richard Wollheim, « Crime, Sin and Mr. Justice Devlin », *Encounter*, November 1959.