The notion of the limited capacity of the law in the enforcement of morals is not a new one in legal theory. St. Thomas Aquinas proclaimed some seven centuries ago that "human laws do not forbid all vices, but only the more grievous ones, and chiefly those that are to the hurt of others." He also insisted that only rules for the common good of the body politic could be made into law.

Venerable as it is in theory, however, it is comparatively new in practice, for by and large legislators have thought it best to forbid all actions which were generally disapproved of at the time. The recommendations of the Wolfenden committee, on which the new Canadian proposals are based, were themselves ignored for 10 years by the parliament of the United Kingdom. It is, in fact, recent theorizing sparked by the Wolfenden report which has helped to better define the desirable limits of legislation.

What are the desirable limits of legislation? The principle of this bill is clearly that the proper sphere of legislation is public behaviour and that purely private behaviour is not a legitimate area of legislative interest. I strongly support this principle because I believe that the competence of the state is limited and that private behaviour is beyond the purview of the state.

But what is public and what is private behaviour? About a century ago John Stuart Mill in his famous book, "On Liberty", chapter 1, said:

> The only purpose for which power can rightfully be exercised over any member of a civilized community is to prevent harm to others. His own good either physical or moral is not a sufficient warrant.

• (2:40 p.m.)

Mill's statement incorporates the laissez-faire economic prejudices of the 19th century; I would not accept it as a complete statement of government power but in this area of criminal law I believe it states the principal thrust of government competence.

Even this principle of harm to others still lacks clarity. Is it physical harm or moral harm? In the context of this bill it must include physical harm, it seems to me, and exclude moral harm. For example, changes with respect to homosexuality could hardly be defended if this were not the bill's philosophy. Yet the harm which the state seeks to protect its citizens from through a criminal law must be somewhat broader than physical harm or we could not justify the fact that we are not entirely wiping the law of gross indecency from our statute books.

It must be moral harm, too, in cases where the other person involved beside the committer of the act is in special need of protection. We are, in the result, very close to the philosophy of the Wolfenden report, and I quote from paragraph 13 of that report:

> "(The) function (of the criminal law), as we see it, is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.
>
> "It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behavior, further than is necessary to carry out the purposes we have outlined."

It was on the basis of this philosophy that the Wolfenden committee recommended that homosexual behavior between consenting adults in private should no longer be a criminal offence. If this attitude is, as I believe it should be, the one guiding us here in the area of criminal law, then we have hardly scratched the surface of criminal law reform. Let me give a few other examples of where this principle may lead us in the future.

In the light of this principle, can the offence of blasphemous libel—section 246 of the Code—any longer be justified? Second, can the offence of attempted suicide—section 213—be justified, or is this not possibly an area which should rather be dealt with by psychiatric means? Third, can the offence of obscenity—section 150—be continued unless it can be shown that obscenity is a contributing factor to illegal sexual conduct such as indirect assault or rape, or except as it affects minors? Fourth, can the offences respecting prostitution be maintained in their present form? I ask these questions for the reflection of hon. members of the house.

It seems to me that hon. members will not only have the duty in the future of scrutinizing legislation on the basis of the harm-to-others principle, to the extent that they accept it, but that they have that same duty now with respect to the various amendments which are before us, the most relevant one, I believe, and the one upon which there is most dispute being that with respect to abortion.

In my opinion the hon. member for York South (Mr. Lewis) in his very eloquent address last night begged the question when he took the view that there should be no law