

LEGAL TOLERATION FOR BELIEF AND BEHAVIOUR

*Kyle Swan*¹

Abstract: While most Christians have come to accept that there should be no attempt on the part of the state to coerce strict matters of conscience, many actively support the state coercively interfering with certain modes of conduct that violate God's moral law. The development of this stance occurred during the seventeenth-century English toleration debates. Then, tolerationists argued that there should be toleration for dissenting Protestant denominations, and eventually for Catholics, heretics and atheists, too. But very few strict biblical Christians, even today, endorse extending legal toleration, for example, to homosexual conduct or same-sex marriage. Two strategies, attributable to Locke, fail to support this asymmetry between religious error and the characteristic types of 'Christian immorality'. The author draws on arguments from the toleration debates to show that the boundaries of legal toleration should be extended to include these violations of divine moral law, and that strict biblical Christians should agree.

'Oh, how I love your law! I meditate on it all day long.' — Psalm 119:97

'I shit on the law of the pope and of the emperor, and on the law of the jurists as well.' — Martin Luther

I

Introduction

An issue that arises frequently in the context of discussions of the influence of Christianity in public life is that of morals legislation. Legal moralism roughly is the view that it can be sufficient justification for a coercive law that the proscribed behaviour is immoral. Christians should think that it is sufficient for thinking something immoral that God forbids it. Christian legal moralists, then, claim that, other things being equal, it can be sufficient justification for a coercive law interfering with some conduct that God forbids the conduct. Most Christian theologians, for example, believe that civil rulers are authorized, even obliged, somehow to apply the principles that stand behind all of divine law morality to public policy, including even the principles behind the Old Testament proscriptions of blasphemy, idolatry and heresy that were part of ancient Hebrew judicial law.

Here is a delightfully *ad hominem* argument for the idea that legislative bodies should not enact coercive rules for which the only justification is that God forbids something:

1. Every earthly thing, including civil government, is under the authority of God.

¹ Dept. of Philosophy, National University of Singapore, 3 Arts Link, Singapore 117570. Email: phisk@nus.edu.sg

2. Civil government derives its authority from God.
3. Civil rulers are to be servants of God.
4. They are authorized and duty-bound to govern according to the will of God.
5. It is God's will that the state enforce merely those rules that are necessary to provide protection from harm and other sorts of intrusion to persons in their worldly affairs: their property, projects and central temporal interests.
6. Therefore, civil rulers are authorized and duty-bound to enforce merely those rules that are necessary to provide protection from harm and other sorts of intrusion to persons in their worldly affairs.
7. Coercive rules for which the only justification is that God forbids something are not necessary to provide protection to persons from harm and other sorts of intrusion.
8. Therefore, civil rulers should not enact coercive rules for which the only justification is that God forbids something.

So not only should there be legal toleration for heretics and atheists, according to this argument; there should be, too, for people who decide to stay open for business, buy or consume alcohol, or play cards on the Sabbath, people who engage in various occult practices, or people who engage in physical intimacy with, or marry, someone of their same sex. According to the argument, civil rulers may not enforce godly righteousness or coercively restrain or punish behaviour that violates divine law morality, including any behaviour revealed by the natural law to be immoral, other than behaviour that jeopardizes the social and national peace.

The argument is not an attack *per se*; it is *ad hominem* in the sense that it challenges, and is directed specifically towards, Christians who have a high view of Scripture and who accept premises 1 to 4, above. Even many committed biblical Christians who are not avowedly theonomist typically support legislation restricting homosexual behaviour and same-sex unions. They generally do so because they think premises 1 to 4 are true, and think God's will is that civil rulers coerce compliance with at least certain features of Christian morality.

The general idea behind this acceptance in premises 1 to 4 of God's authority over statecraft is the acceptance of God's authority over everything. Christianity requires the belief that there are no limits to His rule. There isn't some part of creation falling outside the rightful sovereignty of God. This forms the basis of many objections that Christianity is an intolerant religion. While many have no problem with Christians believing that God sent His Son to rule over their hearts, it is a different matter if He is allowed to sidle up to the 'real' centres of power and command to the point where policy makers work to

implement divine law morality. The objection and this concern are reinforced by the parade of horrors through history in countries where Christianity's establishment led to political suppression of beliefs and practices considered false, heretical or immoral.

But if the argument above is sound, Christianity is not intolerant in this way, even though many Christians are and have been. Moreover, to the extent that Christians are intolerant in this way, then, given the truth of premises 1 to 4, they are doing something wrong. Christians with a high view of Scripture who think 1 to 4 are true should think 5, and therefore 6, are true. The truth of premise 7 relies on various empirical data that I will not bother to rehearse. Perhaps some of these Christians deny 7, but, since it is an independent empirical claim, their denying it cannot be a feature of their biblical Christianity. In any case, the argument is not directed towards those who think that the state should enforce divine law morality because doing so is necessary for a stable and peaceful social order; it is directed towards those who think the state should enforce it because they think that is God's will. So, given the truth of 7, committed biblical Christians, and anyone who accepts premises 1 to 4, should accept premise 8. They should because they should accept 5, even if it is somewhat surprising that there should be an articulation of liberal toleration with overtly theological foundations, justified in terms of God's will.

In the remaining sections, before I turn to a series of arguments aiming to show that Christians should accept this, I present part of what makes the thesis so surprising. Briefly, it is the prevalent acceptance among Christians of a kind of asymmetry between belief and behaviour. While most Christians have come to accept that there should be no attempt on the part of the state to coerce strict matters of conscience, or even religious exercise,² many actively support the state coercively interfering with certain modes of conduct that God forbids *because* God forbids the conduct. The development of this stance occurred during the English toleration debates in the seventeenth century. Then, tolerationists argued that there should be toleration for dissenting Protestant denominations, and eventually for Catholics, heretics and atheists, too. But very few strict biblical Christians, even today, endorse extending legal toleration, for example, to homosexual conduct or same-sex unions. It is one thing to support liberty of conscience, and so the state has no business rooting out idolatry and heresy, or promoting the Christian gospel, but it is quite another to permit all sorts of immorality. I argue that this asymmetry is indefensible, and, given that it needs to be resolved one way or the other, argue that it should be resolved in the more concessive way — the way that accords with liberal toleration — *and* that strict biblical Christians should agree. They should think this is God's will.

² This is excepting constraints against various harmful and intrusive forms of religious exercise. Molech enthusiasts engaged in child sacrifice are not appropriate objects of toleration.

II

**The Putative Asymmetry Between Belief and Behaviour:
Three Lockean Arguments**

The main argument in the most familiar case for religious toleration, one that continues to bear a great deal of the argumentative weight, relies on a distinction between belief and behaviour. There are two main strategies of argument for this distinction, and its practical import, both traceable to John Locke.³ The first relies on the practical irrationality of religious persecution. It is impossible for political authorities to coerce sincere belief. The second strategy identifies the limits of toleration with what is discernable by way of natural reason concerning the duty of civil magistrates. I argue that neither of these strategies justifies adopting the legal stance of toleration towards religious error but coercive interference towards the characteristic types of behaviour forbidden by God. I also consider a third, less familiar, reading of Locke's argument for religious toleration, which does no better in support of the putative asymmetry. Its chief interest lies in its connection to the arguments of tolerationists who were writing as early as a generation before Locke's *First Letter*.

The Argument from Practical Irrationality

Locke defined toleration in terms of noninterference, the absence or removing of force in matters of religion.⁴ One factor for Locke in establishing the appropriate boundaries of toleration was the way he distinguished between crime and sin: 'it does not belong unto the magistrate to make use of his sword in punishing everything, indifferently, that he takes to be a sin against God'.⁵ Locke suggested that those who believed that persecuting religious error is a religious duty were confusing the basis of an individual's membership in political society with the basis of an individual's membership in ecclesiastical society. The former is certainly based in some sense upon the consent of the governed, but, according to Locke, not upon whether or not at any point in time any given individual chooses to recognize the authority to the state. As long as the present government is legitimate it may utilize force to motivate citizens to behave in accordance with their obligation to obey the law.

³ John Locke, *The Works, Vol. 5: Four Letters concerning Toleration* (London, 12th edn., 1824). Locke's first letter kicked off a long back-and-forth exchange with Jonas Proast, who proffered three replies: *The Argument of the Letter concerning Toleration, Briefly Consider'd and Answer'd* (Oxford, 1690); *A Third Letter concerning Toleration* (Oxford, 1691); and *A Second Letter to the Author of the Three Letters for Toleration* (Oxford, 1704). When I need to refer to the volleys in this exchange, I shall do so simply by talking about Locke's *First, Second, Third* and *Fourth Letter*, and Proast's *First, Second* and *Third Reply*.

⁴ Locke, *Second Letter*, p. 62.

⁵ Locke, *First Letter*, pp. 36–7.

However, Locke thought of an ecclesiastical society as strictly, and much more directly, a voluntary association. For example, these days religious individuals can avoid traditions associated with the teaching that, say, God is a trinity if they disagree with it simply by joining up with their local Unitarian congregation. It may very well be an obligation to acknowledge and worship God in the specific ways taught by some religious tradition or ecclesiastical body, but complying with this obligation, for example, by affirming that God is a trinity, is a matter of conscience, a voluntary matter, and so not subject to coercion.

Why should this case be any different from one where the obligation is to conform to the dictates of the divine moral law? If it is not different, then the decision whether or not to comply with, say, the divine prohibition of homosexual conduct would be left to the individuals involved as a voluntary matter. According to the way the first Lockean argument is often used, the difference is that sincere beliefs are a matter of judgment, and behaviour is a matter of will. Punishing an individual for his religious beliefs will be practically irrational from the point of view of those endorsing the punishment because religious beliefs are not responsive to that sort of thing. According to the argument, the punishment cannot bring about the intended change in belief. Locke wrote:

It is in vain for an unbeliever to take up the outward show of another man's profession. Faith only, and inward sincerity, are the things that procure acceptance with God . . . In vain therefore do princes compel their subjects to come into their church-communion, under pretence of saving their souls. If they believe, they will come of their own accord; if they believe not, their coming will nothing avail them.⁶

To support the asymmetry between toleration of religious error and toleration of immoral behaviour, its advocates need only affirm that the relevant practical considerations here do not apply to the use of force in matters concerning breaches of divine law morality. An individual's behavioural compliance with the imposition does not depend on sincerely believing that it is required. Punishment can bring about the intended change in behaviour.⁷

⁶ *Ibid.*, pp. 28–9.

⁷ One may well complain that this misses the point. It is not whether punishment can change the individual's behaviour. It is whether the change will deliver anything beneficial to the individual. Punishing an individual for his violations of divine law morality will be practically irrational from the point of view of those endorsing the punishment because merely changing his outward behaviour is of no lasting benefit to him. What is the point to the state coercing compliance with the external requirements of some traditional or religiously-grounded morality when these requirements are not necessary to promote 'the public peace of societies' (Locke, *First Letter*, p. 37)? A person will either conform to the dictates of morality on his own, without being coerced, or, if he does not, forcing him to conform will not 'bring [him] to the mansions of the blessed' (p. 28).

Even if this is right, it does not generate the asymmetry that contemporary biblical Christians typically endorse. They typically endorse not just freedom of conscience, but also freedom of exercise. For example, these days Christian parents can avoid the tradition associated with the teaching that, say, infants should be brought forward for baptism if they disagree with it simply by joining up with the local Baptist congregation. It may very well be an obligation to obey or acknowledge God in the specific ways taught by some religious tradition or ecclesiastical body, but compliance with it is a voluntary matter. However, there would be no practical irrationality involved in a coercive rule requiring parents to bring their infants forward for baptism. The parents' behavioural compliance with it would not depend on their sincerely believing that it is required. If the aim of the coercion is to change people's behaviour to bring about a higher rate of baptized infants, then the coercion can fulfil its aim.

But what would the point be in doing that when it does not accord with the parents' beliefs? Good question. But I take it that the answer would have something to do with the persecutors' belief that God requires these baptisms. It is the same answer as that to the question of what the point would be in coercively enforcing a rule against homosexual behaviour when that does not accord with the beliefs of those with whom the rule interferes.

Another way to see this problem with the putative asymmetry between the toleration of religious error and the toleration of immorality is to subject the practical irrationality argument to the sort of scrutiny provided by its early critics. The most significant early commentary was that of Anglican clergyman Jonas Proast. Proast actually agreed with Locke that reason and argument are the instruments of sincere saving faith, rather than force and coercion. However, according to Proast, it is just false that outward force is 'utterly useless' for promoting the true religion and saving souls. According to Proast,

If Force be used, not in stead of Reason and Arguments, i.e., not to convince by its own proper Efficacy (which it cannot do,) but onely to bring men to consider those Reasons and Arguments which are proper and sufficient to convince them, but which, without being forced, they would not consider: who can deny, but that indirectly and at a distance, it does some service toward the bringing men to embrace the Truth, which otherwise, either through Carelessness and Negligence they would never acquaint themselves with, or through Prejudice they would reject and condemn unheard . . . ?⁸

Since those who would come to embrace the truth this way would do so through the persuasive force of the relevant reasons and arguments, they would have genuine and sincere saving faith. But external force could be

According to at least several important strands of Christian morality, mere conforming behaviour is not sufficient to please God.

⁸ Proast, *First Reply*, p. 4.

necessary to bring someone to consider those reasons and arguments, since many do not ‘seek the way of Saving them, with such Care and Diligence as the Importance of the matter deserves, and with Minds free from Prejudice and Passion’.⁹

This is a direct challenge to Locke’s case for religious toleration, because although the use of reason and arguments to persuade is an interference that is consistent with toleration, forcing someone to consider reasons and arguments is an interference that is not consistent with toleration. Proast advocated the latter and Locke’s argument does not obviously rule it out. In light of the hold that irrationality and prejudice have over non-believers, ‘what means is there left (besides the Grace of God) to reduce those that are got into a wrong Way, but to lay Thorns and Briars in it? The uneasiness they meet with may at least put them to a stand, and encline them to lend an ear to those who tell them they have mistaken their way, and offer to show them the right.’¹⁰ To break the hold of irrationality, prejudice, carelessness and negligence, Proast recommended the proper use of force to motivate and direct the attention of non-believers towards the truth to give it a fighting chance.¹¹

A significant worry here is that non-belief or rejection of the central doctrines of Christianity might be sufficient evidence for Proast that a person is subject to irrationality, prejudice, careless lack of reflection, etc., and so a good candidate for persecution. Would Proast remove the various ‘Thorns and Briars’ when someone did consider the relevant reasons and arguments, but rejected them? He remarked that those who are ‘incurable . . . must be left to God’.¹² However, he also said explicitly in his *Second Reply* that ‘all who have sufficient means of Instruction provided for them, may justly be punish’d for not being of the National Religion, where the true, is the National Religion: because it is a fault in all such, not to be of that Religion’.¹³ Minimally, he was unjustifiably optimistic that forcing them to consider his favourite reasons and arguments would result in conversion.

Locke expressed this worry in practical terms: in effect, people will not be punished for failing to give a fair hearing to Christianity, but rather for reaching a different conclusion. He wrote to Proast in his *Second Letter* that ‘you having set no time, nor bounds to this consideration of arguments and reasons, short of being convinced; you, under another pretence, put into the magistrate’s hands, as much power to force men to his religion, as any the openest

⁹ *Ibid.*, p. 6.

¹⁰ *Ibid.*, pp. 10–11.

¹¹ The idea that policies of the state can offset bias and bounded rationality and ‘nudge’ people towards making certain choices for their own good has found more recent expression in Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven, 2008).

¹² Proast, *First Reply*, p. 12.

¹³ Proast, *Second Reply*, p. 20.

persecutors can pretend to'.¹⁴ The fact that a heretic has yet failed to change his mind will be interpreted as evidence that more by way of 'Thorns and Briars' are needed in order to motivate a more open reception to the reasons and arguments for Christianity.

Locke's practical concern, then, was over the severity of the penalties he thought officials will be driven to by Proast's argument. However, Proast always insisted that the punishments and inducements be moderate. Torture and the death penalty are strictly out of bounds. In the event, this does shift the terms of the debate. Proast took the principle establishing the necessity, effectiveness and right of the state to use force in order to promote Christianity to be duly established; all that is left is an argument over the 'price': 'This may perhaps require some consideration. And to me, I confess, this seems to be the onely Point concerning which there is any ground for Controversy, in this whole matter.'¹⁵

For his part, Proast recommended that the state impose

such Penalties upon them, as may balance the weight of those Prejudices which encline them to prefer a false Way before the True, and recover them to so much Sobriety and Reflexion, as seriously to put the question to themselves, whether it be really worth the while to undergo such Inconveniences, for adhering to a Religion, which, for any thing they know, may be false, or for rejecting another (if that be the case) which for any thing they know, may be true . . .¹⁶

And

so much Force, or such Penalties as are ordinarily sufficient to prevail with men of common discretion, and not desperately perverse and obstinate, to weigh matters of Religion carefully and impartially; and without which ordinarily they will not do this; so much Force, or such Penalties may fitly and reasonably be used for promoting true Religion in the World, and the Salvation of Souls.¹⁷

In fact, Locke did seem to concede that his original argument had not established the futility of force in matters of religion. Many of the arguments in his *Second*, *Third* and *Fourth Letters* appear to be attempts to reorganize his defence of toleration to meet Proast's challenge.¹⁸

¹⁴ Locke, *Second Letter*, p. 77.

¹⁵ Proast, *First Reply*, p. 12.

¹⁶ *Ibid.*, p. 11.

¹⁷ *Ibid.*, pp. 14–15.

¹⁸ Peter Nicholson, 'John Locke's Later Letters on Toleration', in John Locke, *A Letter Concerning Toleration*, in *Focus*, ed. S. Mendus and J. Horton (London, 1991), p. 178.

Moreover, even if the arguments Proast advanced would not have been enough to oblige Locke to regroup his efforts in defence of toleration, there were other overlooked lines of argument that undermine his initial case. According to one, Locke disregarded the possibility that requiring unbelievers to perform various outward observances that are typically signals of genuine belief, rather than promoting hypocrisy, might actually aid and promote genuine faith. Jeremy Waldron makes the point that it is possible that 'a law requiring attendance at Matins every morning may, despite its inefficacy in the immediate coercion of belief, nevertheless be the best and most rational indirect way of avoiding a decline in genuine religious faith'.¹⁹ According to another argument, even if we are unconcerned about the salvation of unbelievers, blasphemers and heretics, and so there would be no point in coercing them for their sake, we might be concerned about the souls of people they could influence.²⁰ There is no practical irrationality involved in the state punishing heretics in order to protect others who might be susceptible to being led astray.

But much of this is already fairly familiar. That there are some significant gaps in Locke's most often highlighted case for toleration has been noted before. According to Waldron, in light of the forgoing arguments, Locke was not entitled to the view that the use of state power in the service of the true religion is practically irrational.²¹ Those arguments spell out a variety of ways a state inclined towards biblical truth could achieve some of its aims. Indeed, in his *Second Letter*, Locke agreed with Proast that people will frequently neglect the good of their souls if it is left as a purely voluntary matter.²² His epistemological writings also contain a number of references to the fact that people are not thorough enough in their examination of their various opinions.²³ But Locke nonetheless denied that the state had a legitimate role to play here. He thought it would be more effective, and he would have liked better, to have the task taken up by individuals using the power of persuasion. Point them to Scripture, engage in 'friendly and Christian debates with them at their houses', and make use of 'the gentle methods of the Gospel . . . in private conversation'.²⁴

¹⁹ Jeremy Waldron, 'Locke, Toleration, and the Rationality of Persecution', in *Liberal Rights* (Cambridge, 1993), pp. 24–5.

²⁰ See, for example, Nicholson, 'John Locke's Later Letters on Toleration', p. 176. This justification was utilized by Calvin in his *Defense of the Orthodox Faith of the Holy Trinity against the Errors of Michael Servetus* (1554) (Joseph Lecler S.J., *Toleration and the Reformation*, Vol. I, trans. T.L. Westow (New York, 1960)).

²¹ Waldron, 'Locke, Toleration, and the Rationality of Persecution', p. 112.

²² Locke, *Second Letter*, p. 129.

²³ See Locke, *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (Oxford, 1975), Book IV, ch. xv, sec. 6; ch. xvi, sec. 3; ch. xx, sec. 18.

²⁴ Locke, *Second Letter*, p. 87.

The Argument from 'the Light of Nature'

In light of this, it is very interesting to note the various roles Locke did think appropriate for civil magistrates. In his *Third Letter*, Locke wrote, 'as for the toleration of corrupt manners and the debaucheries in life, neither [Proast] nor I do plead for it, but say it is properly the magistrate's business, by punishments to restrain and suppress them'.²⁵ He goes further:

[Civil magistrates] reduce the irregularities of men's manners into order, and bring sobriety, peaceableness, industry, and honesty into fashion. This is their proper business every where; and *for this they have a commission from God, both by the light of nature and revelation*; and by this removing the great counterpoise, which lies in strictness of life, and is so strong a bias, with the greatest part, against the true religion, they would cast the balance on that side. For if men were forced by the magistrate to live sober, honest, and strict lives, whatever their religion were, would not the advantage be on the side of truth, when the gratifying of their lusts were not to be obtained by forsaking her? In men's lives lies the main obstacle to right opinions in religion . . .²⁶

So, not only did Locke apparently endorse the legislation of traditional, religious morality, he also accepted that by doing this the state could play an important role in the promotion of the true religion. The claim seems to be that being forced to comply with the external requirements of traditional, religiously-grounded morality, somehow encourages the right religious beliefs, or at least removes barriers that prevent people from coming to accept them. This is, according to Locke, the magistrate's commission from God. In the *Second Letter*, he declared 'that if magistrates will severely and impartially set themselves against vice, in whomsoever it is found, and leave men to their own consciences in their articles of faith and worship, true religion will spread wider and be more fruitful in the lives of its professors'.²⁷

These passages might be used to paint Locke as at least a kind of Christian legal moralist, even while he advocated the toleration of religious error.²⁸ The argument could be that legislating morals is the one thing the state is called to do — 'a commission from God, both by the light of nature and revelation' — to promote the true religion. It does not promote Christianity directly, by persecuting idolaters and atheists, but rather indirectly, by removing the obstacles that stand in the way of their embracing the true religion. Accordingly, there is a sort of defence of the asymmetry: the toleration of controversial or false beliefs is one thing, but toleration of all sorts of immoral behaviour is quite another.

²⁵ Locke, *Third Letter*, p. 414.

²⁶ *Ibid.*, p. 469 (emphasis added).

²⁷ Locke, *Second Letter*, p. 261,

²⁸ See Maurice Cranston, 'John Locke and the Case for Toleration', in John Locke, *A Letter Concerning Toleration*, in *Focus*, ed. Mendus and Horton, pp. 78–97.

This argument from the light of nature does not work. First, it seems to assume that there is an obvious connection between living according to divine law morality and coming to accept the true religion. But what exactly is it? Locke claimed that the strongest bias against the true religion is living an immoral lifestyle, and that the state could promote the true religion by rooting out moral vice. What is the evidence for this? Do false religions present a more attractive alternative to people because they allow them to pursue immodest lifestyles? Are people who are motivated to behave according to traditional morality, either by force or not, more accepting of Christianity? Are Christians generally more morally upright than the followers of other religions? These assumptions may not have been very controversial in seventeenth-century England, but there are a number of good reasons in circulation today to doubt them.

But, second, even if there is such a connection, this Lockean argument would prove too much. As we have seen, just as it is possible to coerce behaviour to make it conform to the moral rules, it is also possible to coerce behaviour to make it conform to the external requirements of Christian doctrinal orthodoxy, including its requirements related to worship. If this second argument is right and legislating against moral vice would cause the true religion to 'spread wider and be more fruitful in the lives of its professors', why would legislating against recognized heresies or other matters related to conscience not have the same effect? The argument seems to overlook that if doing the former would remove obstacles to right opinion in religion, then surely doing the latter would do so as well. This strategy does not provide a principled way for Christians to advocate both the enforcement of divine law morality and the toleration of religious error. The same considerations of efficacy apply to both belief and behaviour.

In fact, both types of coercion involve coercing behaviour. Requiring conformity in matters of religion simply amounted to requiring conformity in doctrine and worship. The most it would require is the expression of submission to various teachings and the practice of a particular mode of worship. But a person who did this has not had his beliefs coerced; rather, the coercion motivates behaviour that typically is associated with the relevant beliefs or their outward expression. The objection to the first Lockean strategy was that doing this could be effective, indirectly and perhaps only over a long period of time, in producing a genuine change in belief. People can be exposed to certain modes of training and discipline in such a way that leads to a change in belief, so worries about the practical irrationality of coercion does not succeed in ruling out the use of some measure of force in religious matters. Locke couldn't say that there is no point in doing this. It could be exactly the same point as he seemed to acknowledge in coercing traditional morality, whether derived from revelation or the light of nature.

The Argument from Natural Theology

An alternative interpretation of Locke's exchanges with Proast suggests that Locke developed in subsequent rounds a somewhat different strategy based on natural reason.²⁹ Locke and Proast agreed that the principles of natural law determined the civil magistrates' marching orders for their role in promoting the public good. However, they disagreed over what this meant for the question at hand:

[A]ccording to [Proast], the magistrate's commission to use force for the salvation of souls, is from the law of nature . . . Since the commission of the law of nature, to magistrates, being only that general one, of doing good according to the best of their judgments: if that extends to the use of force in matters of religion, it will abundantly more oppose than promote the true religion, if force in the case has any efficacy at all, and so do more harm than good: which . . . [shows] that it can never be proved, that God has given power to magistrates to use it by the commission they have of doing good, from the law of nature.³⁰

There are two important features of Locke's argument here against Proast's claim that the natural law includes a provision for the magistrate to use force against religious error as part of its mandate to pursue the public good. First, the mandate to pursue the public good handed down by God is directed to civil magistrates who are, way more often than not, either fallible Christian discerners of the natural law and revelation or non-Christians. Certainly, God would take this fact into account in his mandate to civil magistrates and intend that they enforce only a limited part of what the sovereign God requires from his creation. The second feature of the argument, then, is a principle to the effect that if attempting to enforce the true religion is more likely to produce religious error, then it is not the case that God has mandated that civil magistrates enforce that component of the natural law or revelation.

This feature of the argument is even clearer in the *Fourth Letter*.

[W]hat advantage [does] this supposition of force, which is supposed to be put into the magistrate's hands by the law of nature to be used in religion, bring[s] to the true religion, when it arms five hundred magistrates against the true religion, who must unavoidably in the state of things in the world act against it, for one that uses force for it . . . it being demonstration, that the prejudice that will accrue to the true religion from such an use of force is five hundred times more than the advantage that can be expected from it; the natural and unavoidable inference from your own ground of benefit is, that God never gave any such power to the magistrate . . .³¹

²⁹ See Alex Tuckness, *Locke and the Legislative Point of View* (Princeton, 2002).

³⁰ Locke, *Third Letter*, p. 495.

³¹ Locke, *Fourth Letter*, p. 566.

This argument actually assumes that force can be effective in producing genuine changes in belief. But given the fallibility of civil magistrates, that's just the problem. It is in this light that we should understand Locke's claim in the *Second Letter* 'that if magistrates will severely and impartially set themselves against vice, in whomsoever it is found, and leave men to their own consciences in their articles of faith and worship, true religion will spread wider and be more fruitful in the lives of its professors'.³² Even if it doesn't, this way of proceeding at least will not be skewed towards making religious error more likely. Any civil magistrate who undertook to enforce the true religion would have to decide what doctrines he was going to enforce.³³ Since most of the world's civil magistrates believe false doctrines, the spread of the truth would be undermined. Surely God would not mandate, though the natural law, that civil magistrates assume a task, that of enforcing the true religion, which would have an undermining effect far and wide on belief in the true religion.³⁴ When attempting to enforce some component divine truth would have this effect, Locke claimed that it was not something that was within the purview of the divine commission to civil magistrates.

So the view is not that we should tolerate because we should be sceptical about the possibility of religious truth or knowledge. Just the opposite, since the argument depends on being able to compare religious truth with the likely consequence of actual states around the world taking up the responsibility. States that assume the responsibility of enforcing religious doctrines generally would not promote the public good. However, perhaps those that assume the responsibility of enforcing divine law morality would. Therefore, this argument from natural law might support the putative asymmetry between the appropriate stance of the state towards matters related to belief and matters

³² Locke, *Second Letter*, p. 261.

³³ Locke wrote to Proast, 'You say, "every magistrate is by the law of nature under an obligation to use force to bring men to the true religion." To this I urge, that the magistrate hath nothing else to determine him in the use of force, for promotion of any religion one before another, but only his own belief or persuasion of the truth of it' (Locke, *Fourth Letter*, p. 559).

³⁴ See Tuckness, *Locke and the Legislative Point of View*, pp. 41–2. Locke wrote to Proast, '[Y]ou have recourse to the . . . law of reason, whereby every one is commissioned to do good. And the propagating the true religion for the salvation of men's souls being doing good, you say, the civil sovereigns are commissioned and required by that law to use their force for those ends. But since by this law all civil sovereigns are commissioned and obliged alike to use their coactive power for the propagating the true religion, and the salvation of souls; and it is not possible for them to execute such a commission, or obey that law, but by using force to bring men to that religion which they judge the true; by which use of force, much more harm than good would be done towards the propagating the true religion in the world, as I have showed elsewhere: therefore no such commission, whose execution would do more harm than good, more hinder than promote the end for which it is supposed given; can be a commission from God by the law of nature' (Locke, *Third Letter*, p. 213).

related to behaviour. It would if, and only if, there is a divine commission, delivered through the natural law, to promote the public good by assuming the responsibility of enforcing divine law morality. According to this version of Locke's argument, there is only if the state assuming the responsibility of enforcing divine law morality would not do greater harm than good.

However, the state assuming the responsibility of enforcing divine law morality raises the same kind of potential dangers. The civil magistrate who undertook to enforce divine law morality would have to decide what rules he was going to enforce. There are problems here even for sincere, faithful Christian nations: will it be the Decalogue (including the proscription against coveting)? The New Testament's more far-reaching interpretation of the commandments?³⁵ It is hard to believe that attempting to enforce either of these would promote the public good.³⁶ If it would not — if it would actually make things worse, as is likely — then it is not part of the divine commission to civil magistrates.

In any event, this way of presenting the issue — What is the divine commission to the civil magistrate? — allows us to understand Locke's argument as continuous with, even if a technical improvement over, some of the arguments of the earlier English tolerationists, like John Goodwin.³⁷ Many parties to the mid-seventeenth-century toleration debates, on both sides, focused on a key passage of Scripture about the role of the civil magistrate in the New Testament book of Romans:

Romans 13: ¹Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. ²Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. ³For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. ⁴For [the civil magistrate] is God's minister to you for good. But if you do evil, be afraid; for he does not bear the sword in vain; for he is God's minister, an avenger to execute wrath on him who practices evil.

This passage identifies governing authorities as God's ministers, having been established by God for the punishment of those who practice evil. In these earlier exchanges on toleration, one group interpreted this commission to

³⁵ For example, Matthew 5:21–22.

³⁶ Consider this suggestive remark from Aquinas: 'Positive law strives chiefly for the common good of the people. And it sometimes happens that the greatest harm comes to the community if an evil is prevented, and so positive law sometimes permits something as an exception lest the community suffer greater disadvantage . . .' (Thomas Aquinas, *On Evil*, trans. Richard Regan, ed. Brian Davies (New York, 2003), p. 402). Aquinas applied this principle to practices like prostitution and creditors charging interest.

³⁷ John Goodwin, *Hagiomastix; or, the Scourge of the Saints displayed in his colours of Ignorance and Blood* (London, 1646).

punish evil in light of the judicial history of the Old Testament Hebrew nation.³⁸ These Puritans believed that, like ancient Israel, nations were united under the one true religion and that citizens who diverged from it were engaged in open rebellion. 'Evil' refers to any violation of the divine law: blasphemy, idolatry, heresy, atheism, adultery, fornication, bestiality, sodomy, witchcraft, Sabbath-breaking, swearing and dishonouring parents, as well as murder, rape and theft.

The early English tolerationists sought to restrict the sense of evil to behaviour obviously wrong by the light of nature. They held that the state had no legitimate authority to regulate spiritual matters or matters related to people's internal beliefs. In fact, Goodwin's argument for toleration in particular, derived from the Romans passage, seems to anticipate Locke's.³⁹ He first noticed that Paul is setting forth the duty, interest, power and role of the civil magistrate — *any* civil magistrate. But, like Locke, Goodwin denied that in our fallen world just *any* civil magistrate will be duly informed about, or qualified to adjudicate over, controversial matters in Christian doctrine, and 'execute wrath on' people caught up in false or heretical beliefs. We can be reasonably assured that most of them weren't. Given the wisdom and goodness of God, He wouldn't set forth duties, interests, powers or roles for an office that its likely holders would not be equipped to discharge.⁴⁰ Were they to try, they would most likely make things worse, condemning 'Truth to death, instead of Error; advancing Error instead of Truth'.⁴¹ Therefore, God did not commission the office of civil magistrate with any duty, interest, power or role with respect to error and heresy in Christianity.

Again, Christians came to accept this position gradually over the course of these debates. Initially, Christians in power extended legal toleration to citizens who were not part of the establishment church. Still, these so-called Independents were required to maintain protestant orthodoxy. More radical tolerationists, like Goodwin, were against the legal persecution of anyone for their erroneous religious views. Yet even Goodwin thought that civil rulers may permissibly punish atheism, since it is evident by the light of nature that God exists.⁴² Only a relatively few radical tolerationists, like Roger

³⁸ Christopher Hill, *The English Bible and the Seventeenth Century Revolution* (London, 1994).

³⁹ See Goodwin, *Hagiomastix*, sec. 45.

⁴⁰ Goodwin wrote, 'it is altogether inconsistent with the wisdom and goodness of God in the Government of the world . . . to lay a necessity upon . . . the civil Magistrates or Rulers hereof, to interpose with their power in such things, whereof, for the generality and farre the greatest part of them, he knew they would be not onely ignorant, but uncapable . . .' (*ibid.*, sec. 46).

⁴¹ *Ibid.*

⁴² John Coffey, 'Puritanism and Liberty Revisited', *The Historical Journal*, 41 (4) (1998), p. 976.

Williams,⁴³ openly advocated the position that most Christians today have converged upon that errors like blasphemy, idolatry, heresy and even atheism should not be subject to legal persecution. To use the law to root out religious error is to violate individual conscience and, according to Williams, amounted to ‘soul rape’.⁴⁴

However, as I have been arguing, the arguments that justify this tolerant stance towards religious error apply with equal force to moral error. Interestingly, there was, even this early on in the toleration debates, a view of the application of natural law still more circumspect.⁴⁵ For example, Thomas Collier advanced the view in the Whitehall Debates (1648–9) that in the Church Age, since the ministry of Christ, even the sin of adultery could only be punishable by excommunication.⁴⁶ On this view, the divine commission to civil magistrates, delivered through the natural law, to promote the public good amounted to an obligation merely to provide a peaceful social environment. Civil magistrates are merely to enforce those rules that tend to provide protection from harm and other sorts of intrusion to persons in their worldly affairs: their property, projects and central temporal interests. This view of the divine commission matches up with what premise 5 of the argument in Section I says is God’s will. This would mean that ‘evil’ in Paul’s letter to the Romans actually has no distinctively theological significance.

Perhaps a problem with this as an argument for my premise 5 is that the word ‘evil’ in Paul’s letter to the first-century Christians in Rome is just more plainly understood as straightforwardly connected with divine law morality, rather than something like merely social evils, and so the early tolerationists, especially the most radical of them, were simply out of line with what their Christianity requires. In the next section, I follow Goodwin’s exposition of the passage and argue that this objection can be fairly definitively answered.

III

Christian Liberalism? A Biblical Case for Liberal Toleration⁴⁷

Christians who accept the views in premises 1 to 4 of the argument in Section I concerning God’s sovereignty in statecraft should think that God’s will concerning the role of civil rulers is more or less clearly expressed in Scripture. If civil rulers are God’s ministers and from Him derive their authority (Romans 13:1, 4), and additionally, if these Christians are right in thinking that civil rulers are supposed to take their cue from God’s will in how they govern, then there should be some revelation of what His will is for how they

⁴³ Roger Williams, *The Bloody Tenent of Persecution* (London, 1644).

⁴⁴ See Martha Nussbaum, *Liberty of Conscience* (New York, 2008).

⁴⁵ Coffey, ‘Puritanism and Liberty Revisited’, p. 977.

⁴⁶ In *Puritanism and Liberty*, ed. A.S.P. Woodhouse (London, 1951), p. 165.

⁴⁷ Much of this section recapitulates my discussion in Kyle Swan, ‘Law, Liberty, and Christian Morality’, *Religious Studies*, 43 (4) (2007), pp. 395–415.

should govern. Even if natural reason delivers a natural mandate for magistrates to promote the public good (which Paul seconds in verse 4), there could be more to say about what the best way is to do that. The question is whether premise 5 is the best expression of God's will or it consists in the state doing anything rather more ambitious, like punishing evil, where this is understood in terms of violations of divine law morality. The plain reading of the passage in Romans 13 suggests that its references to 'evil' have no distinctively theological significance, and so Christians should think it is God's will that the state enforce merely those rules that tend to provide protection from harm and other sorts of intrusion to persons in their worldly affairs.

If the passage reflects God's will concerning the duty, interest, power and role of the office of civil magistrate, then it applies to any civil magistrate. The civil authorities Paul had directly in view in this passage were rulers in Rome.⁴⁸ Paul's letter was to the Christians in Rome. He certainly would have known that the rulers who filled this office did not embrace Christianity, require Christian faith of the citizens they ruled, or require them to conform to any of the moral teachings distinctive to Christianity. They probably did not know much of anything about the beliefs of this odd little sect. No doubt if they had, they would have thought those beliefs were a bit silly and inhibiting, especially the precepts of divine law morality. Paul was apparently unconcerned by this, though. Christians in Rome had a duty to submit to the Roman rulers because God had established them with the authority to rule.⁴⁹ These Roman rulers had been instituted by God and commissioned with a specific task.

Twice in verse 4 Paul referred to the one in authority as God's minister to these people in Rome. So what were Roman rulers doing that allowed Paul to confirm for Christians in Rome the standing of those rulers as God's ministers for good? It cannot have been punishing behaviour that is opposed by Christianity and Christian moral precepts. Roman rulers weren't doing that. Rather, it was that they were generally competent in their role of punishing those who practice evil; that is, those who disrupt the peace by harming or otherwise intruding upon others or their projects. They did at least enough to fulfil their commission to provide protection from acts of violence and theft to warrant

⁴⁸ Most biblical scholars think Paul wrote the letter somewhere in the neighbourhood of 55–7, during the reign of Nero. More specifically, it was during the Quinquennium Neronis, the first five years of Nero's reign, which is noteworthy as a period of competent and judicious rule, for the most part, before things took a more tyrannical turn.

⁴⁹ But a duty to submit to them is not the same thing as a duty to obey them. Christians are not to obey laws requiring, for example, emperor worship or such as would require them to violate God's will. Thomas Manton (1620–77) was no tolerationist, but he argued, invoking Romans 13, that civil disobedience is permissible when the magistrate fails to live up to, or over-steps, his divine mandate. See *The Complete Works of Thomas Manton*, Vol. 4 (London, 1870), pp. 384–5.

Paul's endorsement.⁵⁰ The argument, then, turns out to have an utterly simple structure: according to most conservative biblical Christians, governments should enact coercive rules aimed at restricting behaviour that is opposed by divine law morality. If governments have been commissioned by God to do this, then it should be very surprising, and seems to flirt with inconsistency, that Paul would confirm the standing of Roman rulers as God's ministers, established by God with the authority to punish evildoers for people's good. If 'evil' is understood in terms of what has been revealed by God to be morally wrong, then the Roman rulers were hopelessly failing to live up to their commission as God's ministers to punish evildoers. Paul's endorsement of the Roman rulers is not surprising at all, however, if governments have been commissioned by God to enforce merely those rules that tend to provide protection from harm and other sorts of intrusion to persons in their worldly affairs: their property, projects and central temporal interests.

In fact, Goodwin offered a series of arguments along these lines to show that Paul could not have intended by 'evil' the violation of divine law morality.⁵¹ Rather, it must refer to 'that kinde of evill . . . whereof ordinary Magistrates, or Magistrates in generall, as well Heathen, as Christian, are competent judges, as all such evill is, which is manifestly such, and of a Politicall consideration, as that which is contrary to the light and law of nature'.⁵² Moreover, these arguments not only show that the state has no divine commission to enforce divine law morality; they also show that it has no divine commission to prohibit that which is known from the light of nature to be wrong, other than prohibitions that provide protection from harm and other sorts of intrusion to persons in their worldly affairs.

First, Paul warns his audience to be afraid if they do evil. They are to be afraid because the civil magistrate is 'an avenger to execute wrath on him who practices evil' (vs. 4). However, no violation of any piece of distinctively Christian morality would have been plausible grounds for fear of legal punishment. That is, any such violator would have had nothing to fear from the Roman authorities. They would, however, have reason to fear punishment by the civil authority if any would commit an offence against another person or his property. Therefore, rules prohibiting these sorts of offence are better candidates for the evils that civil authorities have a commission from God to suppress and root out.

Also, in verses 1 and 2, Paul warns that 'everyone must submit himself to the governing authorities' and not resist or rebel against them. However, no one can rightly be thought to refuse to submit to, or resist or rebel against, an

⁵⁰ See Andy Olree, *The Choice Principle* (Lanham, MD, 2006), p. 120. This does not mean that the Roman rulers had no shortcomings in this regard. See Swan, 'Law, Liberty, and Christian Morality', p. 409.

⁵¹ Goodwin, *Hagiomastix*, secs. 47–50.

⁵² *Ibid.*, sec. 46.

authority when he lives in accord with the laws under which he is subject. Since the Roman authorities who Paul's audience lived under did not coerce compliance with divine law morality, no one who would have been in violation of any distinctively Christian moral precept would have been engaged in any sort of resistance or rebellion against the authorities God had established. This means, again, that the evil Paul refers to in the passage cannot rightly be understood in terms of violations of divine law morality.

Another argument connects the role of the state in restraining evil with the exhortation for Christian citizens to do right in verse 3. What does this exhortation amount to? Is it an encouragement to adhere to divine law morality? Supposing this would not make sense of the reason Paul says they were to do right — that if they did, the authorities would commend them. Roman authorities would not have commended anyone for adhering to very much that is distinctive to Christianity. They would probably have thought it unreasonably austere or abstemious for someone to adhere to very much that is required by divine law morality. However, they would have commended Christians who acted as good citizens by obeying the laws within the Empire. Therefore, laws like that, ones that tend to provide protection from harm and other sorts of intrusion to persons in their worldly affairs, are better candidates for the ones God has given the civil authorities to enforce.

If any of these arguments are sound derivations from Romans 13, then conservative biblical Christians are obliged to think premise 5 of the argument in Section I is true. This means they should think that civil rulers are authorized and duty-bound to enforce merely those rules that tend to provide protection from harm and other sorts of intrusion to persons in their worldly affairs. If coercive rules for which the only justification is that God forbids something are not necessary for providing protection to persons from harm and other sorts of intrusion, as I have supposed, then civil rulers may not permissibly enact such coercive rules. They simply are not authorized by God to do this. Putative distinctions showing how behaviour is supposed to be different from belief are beside the point here. There are no such differences that are relevant to the question of what Christians should think governments should tolerate or, alternatively, interfere with. According to premises 1 to 4 of the argument, the only thing relevant to this question is what God has commissioned civil rulers to do. Biblical Christians should think this divine commission is best captured by 5, or something very close to it.

The modern legacy of the seventeenth-century toleration debates, especially in Europe and North America, is that religious partisans are generally more likely to endorse the state tolerating a great deal more religious diversity than they might have otherwise. This is surely important. But these debates do not just hold a modern legacy for Christians; they hold a modern lesson. Even the strictest and most committed biblical Christians should endorse liberal toleration in the sense that political liberals advocate freedom from state

interference for individuals who peacefully pursue modes of living that answer to their own conceptions of the good. Coercive rules for which the only justification is that God forbids something are not adequately justified, and these Christians should agree. They should, in cases where some revelation of divine law morality alone argues in favour of the coercion, practise toleration and eschew invoking the law.

Kyle Swan

NATIONAL UNIVERSITY OF SINGAPORE