

## Law, liberty, and Christian morality

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**Abstract:** There is a long liberal political tradition of marshalling arguments aimed at convincing Christians that distinctively Christian reasons for issuing coercive laws are not sufficient to justify those laws. In the first part of this paper I argue that the two most popular of these arguments, attributable to Locke, will not reliably convince committed biblical Christians, nor, probably, should they. In the second part I argue that even if the Lockean arguments fail, committed biblical Christians should think that God has authorized the state only to fill the same general role that political liberals have identified for it.

### Introduction

A great deal has been written about the mid-twentieth-century debate between Herbert Hart and Patrick Devlin on the legal enforcement of morality. The debate was sparked by the Wolfenden Report, issued in 1957, which concluded that the function of law is to preserve peace and public order, protecting from various types of intrusion people's lives, property, and other personal affairs. Specifically, it recommended relaxing the legal enforcement of Christianity's sexual morality, which prohibits homosexual conduct, so long as the conduct occurred in private. In doing so, it identified a sphere of private morality and immorality that is, as was claimed in the report, not the law's business. According to the report, sin is one thing; crime is another.

The key issues in that debate are familiar: the distinction between positive and critical morality, the distinction between social and individual harm, and the limits of the criminal law; specifically, whether or not there are any principled limits to the state's power to legislate against immorality. Here, I take up an issue that has been for the most part neglected in this debate and the commentary surrounding it: what should be the position of Christian believers when it comes to these issues?

Many ignore this question because they regard it as irrelevant. They suppose it to be irrelevant because, according to certain conceptions of *laïcité*, whatever

reasons there are to advance a principled Christian position on the key issues in the Hart–Devlin debate will lack the requisite sort of public justification and so should be excluded from the public square, or at least from political debates about implementing coercive legislation. That is, if there are distinctively Christian reasons for interfering with immorality, those reasons should not be thought to justify the interference. However, there are a number of recent arguments that aim to justify the inclusion of religious reasons. Many Christian philosophers, political theorists, and lawyers reject it as unfairly burdensome, undemocratic, and even ill-advised from a practical standpoint to require Christians to exclude what they know, by way of religious sources like revelation, from the public square.<sup>1</sup>

What is the relation between law and morality within a Christian society? I will understand such a society to be one where the vast majority of the society's members are committed biblical Christians. What would the operative critical moral principle be in that society providing justification for the positive law? Or, what perhaps amounts to the same thing, what should committed biblical Christians think the state is authorized to do? For example, given that the concept of harm is influenced a great deal by values which are subject to rational dispute, what should Christians think is the understanding of harm that the state would be empowered to protect against through the law? Does this understanding impose any limits on the power of the state to legislate against immorality? I argue that it does. The surprising conclusion is that a Christian principle of critical morality upon which positive laws are justified looks rather a lot like the one defended by Hart.

### **Law, morality, and religion in a liberal society**

Any distinctively Christian principle supporting the legal enforcement of morality would have to deny a very strict sort of separation between Church and state which holds that the former is concerned exclusively with spiritual matters, while the latter is restricted to worldly, temporal, non-spiritual matters. Are there liberal arguments that should convince committed biblical Christians that this separation is justified? Locke attempts to make the case for separation in *A Letter Concerning Toleration*, where he distinguishes between crime and sin. The civil magistrate is not to be concerned with sin as such; only with the public good, 'the Rule and Measure of all Law-making'.<sup>2</sup> According to Locke, 'the Care of Souls does not belong to the Magistrate'.<sup>3</sup> This is rather the sole aim of the Church.

Although Locke is addressing the issue of religious toleration – or the legal enforcement of true religion, rather than the legal enforcement of morality – in his letter, there seem to be some important points of contact between the two issues. Locke's advocacy of toleration and liberty of conscience is based mainly

upon two arguments: first, an argument based on the fact that the opinions of intelligent, sincere, and honest seekers of the truth are at best fallible guides to what is right; and second, an argument to the effect that the instrument of salvation is an individual's beliefs, which cannot be coerced. If these arguments support religious toleration, then it seems that they should also support the toleration of immorality; that is, they should support the idea that the widespread belief that a certain conduct is immoral is not sufficient to justify the state interfering with that conduct.

In his first argument for toleration, Locke says that there is no reason to think civil magistrates have any sort of privileged access to religious truth. To support this claim, he points to the range of diversity in opinion among magistrates past and present, or among those of different states. All, in fact, should be reasonably doubtful that they know God's will concerning things like worship practices. They can tolerate others on the grounds that their judgements are reasonable, and should not insist that their uncertain interpretations of God's will be coercively enforced. If this is right, then, similarly, people should not coerce conformity with their uncertain interpretations of God's will in morality.

However, many Christian critics of liberalism do not see diversity of opinion as an adequate reason for either uncertainty or toleration. Such diversity might not even be too widespread in a society of committed Christians. This is because their claims about God and the good are based on divine revelation and so regarded as free from the possibility of error. There is, of course, quite a bit of diversity in the beliefs of Christians, even committed biblical Christians. Much of this is a result of interpretive differences. However, at least among committed biblical Christians, these will be less significant, especially concerning core items of doctrine. That is, any differences among them will not rule out universal agreement concerning certain religious teachings being anathema, and certain actions being uncontroversially morally wrong. At least some teachings of scripture are pretty unambiguous by their way of reckoning.

However, even if this first argument fails to support the distinction between crime and sin, and convince committed biblical Christians that coercive legislation should have more than only a religious rationale, Locke believes his second argument 'absolutely determines this Controversie'.<sup>4</sup> It is that saving faith is only the result of an inward persuasion of the mind. It cannot be compelled by the magistrate's use of outward force. To be sure, the state can compel various acts of religious observance, but Locke's point is that this will not be of any spiritual benefit to the person while he is yet unpersuaded of the true religion. If this is right, then there is simply no point to this kind of coercion. It does not make a difference to someone who comes to be convinced of the truth of saving faith, because Locke thinks that it cannot be the coercion that convinces him; but neither does it make a difference to someone who is not convinced of its truth, because merely conforming to various religious observances does not

improve his standing in the sight of God. According to Locke, coercion is simply ineffective in delivering the only aim that could plausibly justify coercing or otherwise interfering with religious dissenters – their salvation – and so it lacks the only relevant motivation.

Again, how natural it seems to bring this argument into the service of the idea that there are principled limits to the state interfering with immorality. What is the point of the state coercing compliance with the external requirements of traditional morality when these requirements have nothing to do with protecting others from harm or other sorts of intrusion? A person will either conform to the dictates of morality on his own, without interference, or, if he does not, forcing him to conform will not make him a better or more righteous person, pleasing to God, or meriting salvation. Once again, this is because the state is only capable of changing through force and coercion the outward behaviour of evildoers.

According to at least several important strands of Christian morality, mere conforming behaviour is not sufficient to please God. Good conduct is motivated, not by the state, but by the Holy Spirit and the Church. Sinners offer willing and sincere repentance for their evil ways when they have their hearts pierced by the sword of the Holy Spirit, the gospel, not staring at the wrong end of the sword of the temporal authority. The immorality of those within the Church is dealt with by the Church's control over the Table and its power to excommunicate. The immorality of those outside the Church is dealt with by persuasion and example, or the confession and witness of the Church.

Most strands of secular morality also endorse the idea that forced compliance with the external requirements of morality serves no good purpose. Hart, for example, adopted this line of argument:

The attribution of value to mere conforming behaviour, in abstraction from both motive and consequences, belongs not to morality but to taboo. This does not mean that we cannot intelligibly attribute value to lives dedicated to ideals of chastity or self-denial. Indeed, the achievement of self-discipline not only in sexual matters but in other fields of conduct must on any theory of morality be a constituent of a good life. But what is valuable here is *voluntary* restraint, not submission to coercion, which seems quite empty of moral value.<sup>5</sup>

Hart reached the conclusion that unless the impediments inducing conformity to positive morality are justified by some sort of harm being prevented they deliver nothing good and serve no purpose.

However, many have argued that this type of argument overstates the case against coercion. Even if it is conceded that there are limits to the goods that can be accomplished in a person through force and coercion, especially those of the spiritual and eternal variety, this does not mean that coercion is totally ineffectual. For example, as many have noticed, this Lockean argument underestimates the degree to which belief is subject to the will, perhaps one's own, but

even an external will. It is not necessary that beliefs be subject to the immediate and direct control of the individual in order for coercion to be effective, perhaps only over a long period of time, in producing a change in belief. It is only necessary that beliefs be subject to forms of indirect control. If certain modes of training and discipline can be used to effect changes in moral or religious belief, then it is not too much of a stretch to think coercion could have the same effect.

Finally, even if coercion really is ineffective in producing such changes in individuals, there might be other reasons for employing coercive methods.<sup>6</sup> For example, when John Calvin defended the execution of Michael Servetus in Geneva, he did not do so primarily for the spiritual good of Servetus or other heretics. Rather, it was for the spiritual good of people who might be susceptible to their dangerous influence. So, even if the civil magistrate is incapable of producing true righteousness through the legal enforcement of Christian belief, practice, and morality, he still may be able to root out heresy, immorality, and their effects on others. There is an analogous argument in secular debates over the legal enforcement of morality. Devlin's view, for example, was that legal restrictions of mere immorality are typically concerned 'as much or more with the good of those who might be led into evil by example or temptation' as it is with the good of the evildoers.<sup>7</sup> It thus serves a very important purpose.

The main lesson to draw from this discussion is that the two Lockean arguments will not reliably convince committed biblical Christians to adopt a principled stance of forbearance with respect to conduct that violates a distinctively Christian conception of morality, and they probably should not. But the debate does not end here. Grant that these goods are sometimes the rationale for coercive laws, and that they can actually be effective in preventing the moral or spiritual corruption of others; is the role of the state such that this is the business of the law? What are the limits of the criminal law? And, since we are looking for an argument that should convince committed biblical Christians, what are its limits in a Christian society? Will a Christian society be such that the state must protect its citizens against their moral and spiritual corruption by coercing compliance with God's moral law? What may or should committed biblical Christians think the state is authorized to do?

I turn to this question in the next section. As in the Hart–Devlin debate, this question will be addressed by considering a principle of critical morality upon which positive laws are justified. But it will help to note one way in which the debate between Hart and Devlin was different from this one. It is that while the Hart–Devlin debate focused on the relative merits of an individual harm principle and a social harm principle, this debate will focus on whether the principle should include individual spiritual harms or should be restricted to worldly and temporal harms.

### **Law, morality, and religion in a Christian society**

Devlin is most charitably interpreted as presenting an argument to justify the legal enforcement of morality according to which it protects society from harm. Permitting immorality harms society by undermining society's morality, upon which the society depends for its continued existence. Therefore, according to Devlin, the rationale for using the instruments of the state to prevent immorality is the same as that for using them to prevent treason.<sup>8</sup> Similarly, Basil Mitchell defended the right of society to preserve its essential institutions and the morality that tends to support them.<sup>9</sup> An institution is essential to society, according to Mitchell, if it is characteristic and distinctive of that society. To illustrate this he gives the example that 'some of those who want to preserve the Welsh language and the Welsh Sunday do so not because they believe that these institutions have peculiar merits but because they are characteristically Welsh'.<sup>10</sup> The general point of both Devlin and Mitchell is that a shared morality prevents a society from disintegrating. This morality is essential for holding the society together, and the state is justified in coercively enforcing it for that reason.

I doubt that the sort of committed biblical Christians I mean to be addressing would hang their case for the enforcement of morality on this point. For example, they do not object to the legal recognition of same-sex marriages because they are overly concerned to protect institutions that are distinctive to their cultural heritage. They would object to the state recognizing the legitimacy of same-sex marriages even if this were more consistent with some of their essential institutions (like, say, the US Constitution's Bill of Rights and equal protection clause). They might be happy to see societies that fail to take a legal stand against same-sex marriages disintegrate. They object to same-sex marriages because they violate God's will.

More promising, then, is a line of argument T. A. Roberts presented, which he claimed clarified the relation between law and morality within a Christian society.<sup>11</sup> He claimed that in such a society there would be no strict separation between Church and state of the kind that holds that the former is concerned exclusively with spiritual matters, while the latter is restricted to worldly, temporal, non-spiritual matters.<sup>12</sup> He presented a model of theological legal moralism based on the following principle of critical morality: Christian morality 'expresses God's will, and ... the coercion or submission of men to that morality by law is a value because what is thereby achieved is an essential element, given the fallen state of human beings, in creating a society of individuals living lives well pleasing to God'.<sup>13</sup>

The principle, as stated, is not sufficiently clear about the notion of harm that laws enforcing morality are supposed to protect against, or about who or what such laws are aimed at protecting. Is it protecting against spiritual harm

that individuals are susceptible to, or is it more concerned about preserving a certain type of society? Answering these questions will help to locate Roberts's view with respect to the views of Hart and Devlin.

First, Roberts distinguishes his view from Hart's by repeating the familiar complaint that Hart, in claiming that the sort of immoral sexual behaviour that the state proposes to interfere with, like sodomy, does not typically cause harm to others or those involved, unduly restricts the relevant notion of harm to mere physical injury. Here, Roberts mentions specifically the individual *spiritual* harm done to participants in the behaviour.<sup>14</sup> This seems to take Roberts's view somewhat closer to Hart's, subject to the former including spiritual harms. Since Hart thinks that certain instances of legal paternalism are appropriate, he might not have any basis for objecting to laws prohibiting immoral sexual behaviour if he came to accept that they caused spiritual harm. This is a metaphysical dispute between Hart and Roberts. It certainly affects their positions in the debate about the limits of the criminal law, but it is a rather different dispute.

However, Roberts does not limit the law merely to protection against individual physical and spiritual harm. To clarify this, he writes:

For a Christian religious morality, based on the notion of the revealed will of God, its principle of critical morality upon which the enforcement of positive law is justified cannot be only and narrowly the prevention of harm to others (Hart) or the preservation of society (Devlin). Both aims are of course embraced by the scope of Christian religious morality but neither, either taken singly or together exhaust these aims.<sup>15</sup>

The main difference between Roberts's view and Devlin's concerns the type of society, its essential rules and institutions, that the state should be concerned to preserve. For Roberts, they are the rules and institutions that facilitate people living lives pleasing to God.

Roberts even considers the possibility that enforcing Christian morality by law serves to protect God from harm. He rejects this because it is impossible for people to do things that cause God harm; according to the traditional conception of God, He is an impassible being. But, given that God is a personal being and that people's relationships with God are personal relationships, it is possible for us humans to do things that cause harm to this relationship. Again, typically in Christian theology this is understood in no way to cause God any harm. Rather, it does spiritual harm to us, and enforcing Christian morality is aimed at preventing this. But this is not all, because it is also typically understood in Christian theology that by doing harm to our relationship with God we also offend God in some sense. Hart's principle does allow for offences to be relevant to the issue of what behaviours the state will use to the law to prevent, but the fact that Roberts includes God as someone who can be subject to offence in response to the actions of individuals makes a big difference to their respective views on the limits of the criminal law.

As expected, Roberts explains that the source for discovering which behaviours offend God, damaging our relationship with Him, causing us spiritual harm, and threatening the institutions essential for a society where people live lives pleasing to God is divine revelation. What exactly is included? What are the moral rules that the state will be authorized to enforce? Committed biblical Christians may select from the following five options.

The first is to say that the state is mandated to enforce the entire law given by God. This would include every directive given following the exodus from Egypt, which established the Hebrew people as a nation. Its judicial or civil law contained both the moral law and the ceremonial and dietary laws. The former were given for ordinary moral guidance and are thought to be part of general revelation. The latter covered aspects of the Jewish sacrificial system and mandated the methods for maintaining ritual cleanliness. They were for ritual purity, rather than ordinary moral guidance, and are typically thought by Christians to prefigure Christ, including his sacrifice and its effects. They are not part of general revelation and, according to Christians, have been brought to an end, or perhaps better, fulfilled through the ministry of Jesus. This means that they should not be thought to oblige anyone even morally, let alone as a part of the legal system. In fact, *The Westminster Confession* teaches in chapter 19 that the ‘sundry judicial laws’, which God gave to Israel as ‘a body politic’, have ‘expired together with the state of that people, not obliging any other, now, further than the general equity thereof may require’.

However, if general equity includes the entire moral law, as many Christians think, then the moral law is what is given to the state to enforce. This is the second option. Even though the ancient Hebrew republic has ‘expired’, we remain called to obedience by God with respect to the moral law. It is part of general revelation, written in nature, and so publicly accessible to any rational agent. Therefore, any violation of God’s moral law should be prohibited by the civil authorities, including violating the Sabbath, disrespecting one’s parents, lying, and practising witchcraft, bestiality, fornication, adultery, and homosexuality. Also, idolatry, heresy, and blasphemy are violations of the moral law. After all, we are supposed to know from general revelation that God exists. There is even more. For example, in his letter to the Romans, Paul seems to include gossiping and boasting among behaviours that are known to be wrong through general revelation.<sup>16</sup> He seems to say in his first letter to the Corinthians that we know by general revelation that men should not wear their hair long.<sup>17</sup>

One point to make against this second option is that committed biblical Christians should be obliged not to pick and choose here. That is, if they think that the state should use the law to interfere with violations of God’s moral law, then they should think this applies to all such violations. They frequently do not, though. Even the most committed biblical Christian would typically regard a law about the length of a man’s hair, and laws against gossiping and boasting,



as unwarranted, as well as silly, intrusions. Also, while they support the state coercively interfering with a fairly wide range of immoral behaviour, they do not typically think the state should attempt to coerce strict matters of conscience or any of the outward behaviours that are typically associated with matters of conscience, say by requiring weekly attendance at a Christian worship service, preventing people from working on the Sabbath, or passing laws against public acts of idolatry or the proclamation of heresy or false religion.

The third option is that the state enforces the Decalogue. However, many of the behaviours proscribed by the moral law – idolatry, heresy, blasphemy, violations of the Sabbath, disrespect of one’s parents, and dishonesty – are either explicitly or arguably prohibited in the Decalogue. A variety of sexual acts are forbidden in Leviticus, but many theologians have argued that the intent behind the commandment against adultery also includes all the sexual sins, including bestiality, fornication, and homosexual conduct. Anyway, the point is that the same problems that were raised for the second option are relevant here since, in light of the first four commandments, this third option also implies that the state is authorized to legislate in matters related to conscience.

To avoid this, many endorse a fourth option: distinguish between the first and second tables of the Decalogue and argue that the state is limited to enforcing the second table. This seems a bit ad hoc, but the idea is that there seems to be a natural, and perhaps intentional, division between commandments that govern a person’s relationship with God (the first four) and commandments that govern relationships among people (the remaining ones). This option might help the majority of Christians who would like to deny that the state is called to enforce behaviours associated with strict matters of conscience, but in order to do so they would also need some way of explaining why there is this specific set of moral wrongs that is not the law’s business. It is not enough to notice the division; they need to explain why that division is relevant to the question of what the state is called upon by God, and so authorized, to enforce.

Another problem is that in the Christian New Testament, Jesus explicitly provided an interpretation of the commandment against killing others according to which it is meant to prohibit hating others as well, and an interpretation of the commandment against adultery according to which it is also meant to prohibit lust.<sup>18</sup> Can the state enforce such rules? Should it try? A related problem is that the second table of the Decalogue includes the tenth commandment. What would be involved in the state’s attempt to root out covetousness? Does this even make sense? This suggests an even more ad hoc fifth option, which proposes that the state enforces only the outward acts associated with commandments 5 through 9. The problem here is in showing how this amounts to something different from Hart’s principle, since it might seem that the only outward acts that could be unambiguously interpreted as violations of commandments 5 through 9 are just those Hart’s principle would proscribe.

Roberts's model seems to entail a version of the second option. The principle was that the state is authorized to coerce compliance with Christian morality in order to establish an institutional framework where people live lives that are pleasing to God – their behaviours will not offend Him, damage their relationship with Him, or otherwise cause anyone spiritual harm. Certainly for Christians, any violation of God's moral law offends God, damages a person's relationship with Him, and causes other kinds of spiritual harm. This goes for violations like failing to observe the Sabbath, disrespecting one's parents, lying, and practising witchcraft, adultery, bestiality, fornication, and homosexuality, as well as violations like idolatry, heresy, and blasphemy.

These three violations – idolatry, heresy, and blasphemy – in particular generate difficulties for a theological legal moralism. In the previous section I discussed how people have been extremely sceptical about the state's ability to utilize punishment or the threat of punishment to affect beliefs. I noted there that the scepticism is not entirely warranted. The state, remember, would not be threatening the dissenters, apostates, heretics, infidels, and atheists with punishment for holding their false beliefs, but for the harmful role they play in broadcasting them. The state need only forbid that. The state might also mandate more of the behaviour that is typically associated with the true beliefs, which might eventually affect the beliefs of dissenters, apostates, heretics, infidels, and atheists, or think long-term and mandate a curriculum of religious education to minimize these sorts of violations of God's law.

Roberts does not provide any principled distinction that would preclude any of these legal restrictions and requirements. In fact, it seems to follow from the principle Roberts advances that he could not provide such a distinction.<sup>19</sup> But there is one distinction he allows between Christian morality and what the positive law will look like in a Christian society that is consistent with his principle: 'Of its essence', he says, 'positive law is mainly (though not exclusively) concerned with overt behaviour ... . In a religious society positive law will proscribe those actions which transgress what is believed to be divine law. However a religious morality ... is concerned with more than the overt behaviour of the individual.'<sup>20</sup> Christian morality in particular requires moral perfection in word, thought, and deed, achieved ultimately through the power of divine grace, but 'positive law in the Christian society will' limit itself to legislating 'in an attempt to ensure, so far as this is practically possible ... that ... he does not commit acts' that will offend God, damage his relationship with God, or otherwise cause people spiritual harm.<sup>21</sup> So the model Roberts develops is committed to a version of the second option, but one which only authorizes the state to interfere with the outward behaviours associated with violations of God's moral law.

The reason Roberts thinks that this is the relevant principle for determining the content and limits of the positive law in a Christian society is that, 'whatever

the form of government, the sovereign can be deemed to derive his authority from God'.<sup>22</sup> If God has authorized the temporal rulers to enforce the moral law, then 'so far as this is practically possible' they are obliged to do so:

Divine law morality is, to borrow Devlin's phrase, 'one seamless web'. Divine law morality, including its sexual morality, is valid equally for each individual within the Christian society. Moreover, this morality is universal ... valid for each Christian society, but also in the sense that, being God's morality, it is valid for every non-Christian society .... Thus divine law morality claims to be the only truly universal morality. It therefore rejects Devlin's notion that the function of positive law is to enforce one type of morality in this society and another type of morality in another. [It] also rejects Mill's distinction, to which Hart is sympathetic, between private and public morality. Sin, transgression against God's will, is sin whether it is committed in private or in public, and ... is very much the law's business ... since the function of the law is to enforce God's will.<sup>23</sup>

So the argument is at least this:

- (1) Every earthly thing, including civil governments, is under the authority of God.
- (2) The state derives its authority from God.
- (3) The civil ruler is to be a servant of God.
- (4) He is authorized and duty-bound to govern according to the will of God.
- (5) It is God's will that the state coerces compliance with Christian morality in order to establish an institutional framework where people live lives that are pleasing to God – their behaviours will not offend Him, damage their relationship with Him, or otherwise cause anyone spiritual harm.
- (6) Therefore, the state is authorized and duty-bound to coerce compliance with Christian morality in order to establish an institutional framework where people live lives that are pleasing to God – their behaviours will not offend Him, damage their relationship with Him, or otherwise cause anyone spiritual harm.

The view, then, is at least very similar to Aquinas's, who wrote that civil rulers are authorized and duty-bound 'to promote the welfare of the community in such a way that it leads fittingly to the happiness of heaven; insisting upon the performance of all that leads thereto, and forbidding, as far as is possible, whatever is inconsistent with this end'.<sup>24</sup>

I think that this argument fails, even if I grant committed biblical Christians premises (1) through (4). The conclusion only follows if the expressed will of God is that governments, and their laws, institutions, and practices conform to divine moral law.<sup>25</sup> Is the function of the law to enforce God's will? Has God authorized the state to do this? Is premise (5) really true? I will argue that it is false, and that committed biblical Christians can and probably should agree that it is false.<sup>26</sup>

Two passages in the Christian New Testament deal directly with the role of the civil magistrate, Romans 13.1:

Everyone 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. 2. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgement on themselves. 3. For 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. 4. For [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.

And, I Peter 2.14: '[The civil magistrate is] sent by [God] for the punishment of evildoers and the praise of those who do right.' These passages refer to the civil magistrate as God's minister and being sent by God, respectively, for the punishment of evildoers. He is authorized by God and duty-bound to restrain evil and punish evildoers.

What do 'evil' and 'evildoers' in these passages refer to? Violations and violators of God's moral law? The plain reading of these passages implies that the answer is no. The civil authority Paul and Peter refer to in these passages has to be a magistrate of the Roman republic. Paul's letter was to the Christians in Rome; Peter's letter was to Christians in various provinces of the Roman Empire. A Roman civil magistrate would not have embraced Christianity; he would not have required such faith of the citizens he ruled; and he would not have required them to embrace or conform to any of the moral teachings uniquely specific to that faith, not even those known by way of general revelation. This civil magistrate certainly did not enforce all of them. Indeed, it is likely that he did not even know what Christian faith consisted in or what its distinctive moral teachings were. If he had, it is likely that he would have regarded such faith and moral teachings with either contempt or ridicule. Yet, despite all of this, Peter says the magistrate is sent by God.

Paul, who is providing a fuller, more detailed account of the function of the governing authorities and the relationship between it and Christian citizens, says in verse 1 that God has established the authorities that exist and calls Christians to submit to the Roman civil magistrate. In verse 4, Paul claims that this authority is – not should be, but is – God's minister, literally, God's servant, in his functioning. It follows, then, that a civil magistrate can fail to do anything to coerce or encourage compliance with distinctively Christian morality and still be considered to be God's servant and fulfilling the divine mandate for his office.

Paul claims that the magistrate is God's servant because Paul would have observed that even these godless and morally depraved Roman civil authorities were generally competent in enforcing those rules that tend to provide protection

from harm and other intrusions to persons and their property; for example, rules that restrain outward acts of violence and theft, and promote peace and social order, an environment where people can pursue their projects without arbitrary interferences. None of these goals, however, requires that the magistrate establish or enforce Christianity or a distinctively Christian morality. Therefore, it is not necessary to the magistrate's fulfilling God's mandate for his office that he does any of this. It is not the case that the state must protect its citizens against their moral and spiritual corruption by coercing compliance with God's moral law in order for it to receive divine authorization. All that is necessary is that the state is, as Paul said, an avenger to execute punishment on evildoers. The simplest way of reading this is to say, as Martin Luther did, that Paul is speaking 'of external things, that they should be ordered and governed on earth'. Luther says that without this,

The world would be reduced to chaos. For this reason God has ordained two governments: the spiritual, by which the Holy Spirit produces Christians and righteous people under Christ; and the temporal, which restrains the un-Christian and wicked so that – no thanks to them – they are obliged to keep still and to maintain an outward peace. Thus does St Paul interpret the temporal sword in Romans 13, when he says it is not a terror to good conduct but to bad. And Peter says it is for the punishment of the wicked.

According to Luther, 'The temporal government has laws which extend no further than to life and property and external affairs on earth'.<sup>27</sup> Anyone who disagrees and thinks that the enforcement of distinctively Christian moral rules revealed in the Bible is God's mandate to the civil authorities has to meet the burden of showing how this can be reconciled with Paul's commendation of the Roman civil authorities and confirmation of their standing as God's ministers in the way they were functioning.

In addition to Luther, arguments similar to the forgoing were used by many of the seventeenth-century tolerationists, like Roger Williams and John Goodwin.<sup>28</sup> Williams argued that Romans 13 'is generally mistaken, and wrested from the scope of God's Spirit, and the nature of the place, and cannot truly be alleaded by any for the Power of the *Civill Magistrate* to be exercised in *spirituall* and *Soule-matters*'.<sup>29</sup> According to Williams, 'evil' in the biblical passages that concern the role of the state is not being used to refer to violations of God's moral law:

The word κακόν is generally opposed to Civill Goodness or Virtue in a Common-wealth, and not to Spirituall Good or Religion in the Church. Secondly, I have proved from the scope of the place, that here is not intended Evill against the Spirituall or Christian Estate, handled in the 12 Chap. But Evill against the Civill State, in this 13 properly falling under the cognizance of the Civill Minister of God, the Magistrate, and punishable by that civill sword of his, as an incivillitie, disorder, or breach of that civill order, peace and civility, unto which all the Inhabitants of a City, Town, or Kingdome oblige themselves.<sup>30</sup>

Goodwin formulated six arguments derived from Romans 13 for limiting the scope of the mandate to punish evil.<sup>31</sup> The first, fourth, fifth, and sixth are the most relevant.

The first shows that there are a number of examples in scripture where some prescription or precept reads as if it were to have universal or general application, but it would be implausible if that were the intent. For example, Exodus 12.48 says that ‘no uncircumcised person’ should eat the Passover meal, but this should not be thought to have precluded the Hebrew women from partaking. When Paul instructed the Thessalonians that those who do not work should not eat (2 Thessalonians 3.10), the rule did not apply to those who were sick or incapable of working. In Romans 13.3, Paul is not expressing ignorance of the many earthly rulers who *do* hold terror for those who do right; rather, he means to refer to those rulers who govern according to God’s will. Likewise, the evildoers in verse 4 need not refer to those who violate anything of divine law morality, ‘but onely every man that *doth* any such *evill*, which is of a politicall cognizance, and proper for a Magistrate, as a Magistrate, to punish’.<sup>32</sup>

The fourth argument focuses on the part of verse 4 that warns evildoers to ‘be afraid’. They are to be afraid because the civil magistrate wields the temporal sword of punishment. But what sorts of evil, which, if committed by Christians living in the Roman Empire, would have been likely cause for fear of punishment? Would *any* violation of distinctively Christian morality been a plausible source of such fear under Roman authorities? Goodwin concludes:

Therefore, by that *evill*, upon the doing of which they had cause to be afraid of the Roman *powers* or Magistracy, the Apostle only meanes such wicked acts or practices, which they were apt to punish and take vengeance on, as apprehending them prejudiciall or destructive to the peace, safety, or welfare of their state.<sup>33</sup>

Paul did not mean any of the distinctively Christian moral precepts.

The fifth argument places the state’s authority to restrain evil in the context of Paul’s opening exhortation in verse 1 for everyone to submit to the governing authorities, and his warning in verse 2 not to resist or rebel against them. Goodwin writes,

From whence it clearly appears, that by it is onely meant the *doing* of such *evill*, which was prohibited by the Roman Laws and Edicts. For no man can be said, either to refuse subjection unto, or to *resist the powers*, under which he lives, who lives in an orderly subjection and obedience unto all their Laws.<sup>34</sup>

Again, none of the laws of the Roman Empire did anything like coerce compliance with Christian morality in order to establish an institutional framework where people live lives that are pleasing to God where their behaviours will not offend him, damage their relationship with him, or otherwise cause anyone spiritual harm. Therefore, no one in violation of the distinctively Christian moral precepts

would have been engaged in resistance, or any sort of rebellion, to the authority of the Roman authorities.

Finally, the sixth 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? Goodwin says that would not make sense of the reason Paul says they were to do right – that if they did, the authorities would commend them. But the Roman authorities would likely have thought it unreasonably austere or abstemious for someone to adhere to very much that is distinctive in divine law morality. They would not have commended it. However, they would have commended Christians who acted as good citizens by obeying the laws and edicts within the Empire.

The effect of these arguments is not to whitewash the many serious shortcomings in the Roman political and legal scene. Slavery and infanticide, for example, were practiced with impunity. However, the point is not that Christians involved in such immorality would have had nothing to fear. Rather, it is that they would have had nothing to fear *from the Romans*. They would have been doing much wrong, but they would not have been doing the wrong of failing to subject themselves to the civil authorities God had placed over them, which is the main focus of the passage. Furthermore, as I have already argued, Paul's commendation of the Roman civil authorities and confirmation of their standing as God's ministers in the way they were functioning suggests that they were competent enough in doing the sorts of things God authorizes the civil authorities to do. They could and should have done better. But there are no reasons to believe that the way for them to do better was to make the legal system conform to divine law morality. Rather, the arguments that have been adduced from the passage suggest that it was precisely in enforcing those rules that tend to provide protection from harm and other intrusions to persons and their property that the Roman civil authorities should have done better.

God's mandate to the civil authority is for it to fulfil the same role that Hart argued for in his debate with Devlin: it is to provide individuals with protection from harm and other intrusions in their worldly affairs, their projects and most central temporal interests. The magistrate fulfils his God-ordained role, and acts as God's servant, when he merely does this. Scripture does not require that governments, in order to discharge the tasks that they have been authorized by God and duty-bound to discharge, enforce Godly righteousness, or restrain and punish behaviour that violates the moral law, or any behaviour known from general revelation to be moral evil, other than those evils that jeopardize the social and national peace. Biblical Christians are committed to thinking that any violation of the moral law is morally wrong in as much as it is forbidden by God; but they are also committed to acknowledging that there is no divine mandate to coerce obedience to any of the biblical rules other

than those that provide protection to a person's life, property, and other worldly concerns.

Since committed biblical Christians must regard premise (5) as false, Roberts's argument fails. This means that a strict and committed biblical Christian can and probably should be politically liberal 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. Freedom in such matters from interference implies that coercive laws that are pursued in terms of distinctively Christian values are not adequately justified. Christians should, in cases where these values alone argue in favour of the coercion, observe restraint.

This is a characteristic upshot of justificatory liberalism. Justificatory liberals argue for rejecting coercive laws for which its supporters enjoy only religious justification, because arguments for coercive laws necessarily appealing to religious convictions are not public in the requisite sense. Christopher Eberle, who rejects the case for restraint in such cases, argues that it is too much to expect Christians to exercise restraint in the face of their 'totalizing and overriding obligation to obey God'.<sup>35</sup> Eberle argues that a Christian citizen is permitted 'to support coercive laws he conscientiously takes to be mandated by God, even if he lacks a public justification for those laws'.<sup>36</sup> This duty is implied by his principle of conscientious engagement.<sup>37</sup> Christians, according to Eberle, 'regard themselves as bound to obey a set of overriding and totalizing obligations imposed upon them by their Creator. They regard their failure to discharge those obligations as anathema.'<sup>38</sup> As he sees it, it would be disobedient to God not to attempt to pursue coercive policies that reflect God's will.

Gerald Gaus, in discussing Eberle's argument, constructed the following dilemma for this kind of view:

- (1) Religious citizens may be reasonably doubtful that they know the will of God; they can accept adverse democratic decisions on the grounds that the majority's judgment is also reasonable, and in light of this, religious citizens should not insist that their uncertain interpretations [of God's will] be law. But if this is their view, then it also seems that they can abide by the principle of restraint in political argument by refusing to appeal to their uncertain interpretations when arguing about what the law should be: they can live with the law failing to reflect their view of God's will.
- (2) If they cannot accept the principle of restraint in political argument because it will be too much of a strain to fail to act as God tells them, then they will feel unable to obey laws contrary to their understanding of God's will.<sup>39</sup>

Gaus argued that they would be unable to obey such laws because he says, 'If it would be disobedient to God not to raise religious arguments, surely it is still disobedient to have raised them, but then act contrary to them because the majority has decided otherwise.'<sup>40</sup>

In effect, I have argued that Christians can avoid this dilemma. They should accept the principle of restraint in public argument. Eberle's principle of engagement, no matter how conscientious, permits the state to go beyond its



divinely ordained functions of only punishing social evildoers who disrupt the order, safety, and welfare of civil society. If such disruptions are the only sorts of evil that God has given the state to interfere with, then Christians would be obliged to observe restraint with respect to imposing coercive policies reflecting God's will. The likely effect would be that the only permissible coercive laws would be ones that were justified by reasons that are public in the requisite sense. However, the restraint would not be a response to any doubt about what God's will is. God's will concerning the role of the state and the limits of the criminal law is revealed in scripture. This means that the liberal view that coercive legislation, in order to be justified, must be supported with adequate public reasons is overdetermined, whether you include or exclude the sources of reasoning specific to the Christian religion.

These liberal conclusions are distinctive and important, but subject to a few provisos: first, they should not be thought to entail the thesis that the state need only enforce negative political rights of non-interference. The protection of individuals' projects and central interests may require various positive provisions. Also, it should be noted that these conclusions are consistent with arguments for the enforcement of some of the distinctive rules of Christian morality on the basis that some more permissive stance towards them causes various kinds of temporal harm (for example, some claim that homosexual conduct is a public health risk).

However, a great deal would depend on the strength of the empirical case for this, the scope of the putative dangers, and how it compares to the potential dangers caused by attempts on the part of the state to root out the proscribed behaviours, or from empowering the state effectively to do so. For example, these are at least some of the reasons why Prohibition in the 1930s was such a bad idea and why many think that the current war on drugs is equally ill-advised. Just consider how many more people would be much more sympathetic to the legal prohibition of marijuana if those under its influence really were prone to insanity and the random acts of destruction and violence portrayed in the 1930s' *Reefer Madness*, a film which achieved cult-classic status for scoring so high on the unintentional-comedy scale.

One possible worry about these liberal conclusions is that they may result from misinterpreting what the focus of Roberts's argument is. He claimed to be presenting a model that clarifies the relation between law and morality within a Christian society, one where the vast majority of its citizens are committed biblical Christians. I have interpreted this as a general question concerning what committed biblical Christians in any social-political context should think the state is authorized to do, but perhaps I have been wrong to do so. My thought was that if in their letters Peter and Paul are addressing this issue, then it not only follows that committed biblical Christians can be politically liberal in the sense I have described, they should be.

Would a sincere Christian government official go beyond the divinely instituted mandate for his office? Would a sincere Christian citizen support him doing so? I argued that coercing Christianity or a distinctively Christian morality is impermissible since it involves the state in stepping beyond its divinely ordained functions of only punishing social evildoers who disrupt the social and national peace by intruding upon or harming others or their property. If premises (1) through (4) of Roberts's argument are true – and nothing I have put forward here conflicts with or undermines them – then since the magistrate has no divine authority to punish any behaviour but that which is socially evil, the magistrate not only need not enforce God's moral law, he must not. It is not given him to do so.

However, Roberts may be suggesting that things would be different in a Christian society where the vast majority of its citizens are committed biblical Christians and where there would be widespread concern for the spiritual well-being of others.<sup>41</sup> In this kind of social-political context, one very different than that in which Peter and Paul were writing, Roberts could perhaps allow that the citizens can be politically liberal in the sense I have described, but there are no biblical reasons supporting the idea that they should be. In fact, in order to achieve this society's mutually agreed upon aim of establishing an institutional framework where people live lives that are pleasing to God, the state may and probably should coerce compliance with distinctively Christian morality. This would mean that Peter and Paul are not addressing the question of what the state is authorized to do in any social-political context. They are establishing the general principle that the state is authorized to restrain and punish evil and evildoers, but the social-political context will determine what the relevant sorts of evil are.

There is at least some textual evidence in favour of interpreting Roberts as claiming that the social-political context will determine what the state is authorized by God to do. For example, he notes that there was a time in western Europe when political authorities delegated the function of enforcing sexual morals to ecclesiastical bodies, which enacted laws proscribing homosexual conduct, fornication, masturbation, bestiality, prostitution, sodomy, adultery, divorce, bigamy, and polygamy, and enforced them whether performed in public or private. Roberts writes,

So far reaching was this view of sexual morals, given tangible expression by positive ecclesiastical law, that with the eventual demise of the authority and jurisdiction of the ecclesiastical courts in Western Europe, sexual behaviour punishable by positive ecclesiastical law was later punishable by positive law through the introduction of specific legislation to this effect.<sup>42</sup>

The idea is that when the social-political context changed, some of the functions of the state changed in order that it would continue to fulfil its role in restraining evil.

An objection like this would weaken or undermine some of my more striking conclusions if it were not for the following three points. First, the objection is altogether irrelevant as far as practical matters go. That is, even if the alternative interpretation of Peter and Paul's letters is correct, then the conclusion of Roberts's argument would only apply to a Christian society where the vast majority of its citizens are committed biblical Christians and where there would be widespread concern for the spiritual well-being of others. Roberts admits that his 'model therefore will be of little direct, practical value in discussing the issues of law and morality raised for a religious morality in a society which is predominantly secular'.<sup>43</sup>

It seems pretty obvious that the social-political context in which Peter and Paul were writing bears more resemblance to any modern Western society in the relevant respects than to a Christian society like the one Roberts is imagining. So it still seems that committed biblical Christians today should join Paul in commending civil authorities, even when they do not do anything to enforce divine law morality, and not advocate that civil authorities do more to enforce it in Western pluralistic democracies.

Second, even if this was false, and the social-political context was very different than it is today, it would not matter. The simplest and most obvious reading of Peter and Paul's letters is the one offered by Luther, Williams, and Goodwin, and the letters are, at least in part, addressing the question of what the state is authorized by God to do. What they say indicates that the state is not required or even authorized by God to enforce the distinctively Christian aspects of morality. This is not to say that the alternative interpretation I suggested above is altogether implausible, but many of the committed biblical Christians I have in mind typically adopt an interpretive stance towards scripture that accepts the plain, literal meaning of a passage, unless there are really good reasons derived from some clearer part of scripture not to. It would be unacceptably arbitrary to adopt this interpretive stance in the case of passages that, for example, suggest the absolute moral wrongness of homosexual conduct (rather than its wrongness only in certain contexts, like only in a context outside of a loving, committed, monogamous relationship, as some have interpreted these passages), but not to adopt it in the case of the passages in Peter and Paul's letters about the role of the civil magistrate. Requiring consistency here at least places a fairly significant burden of proof on those who are in favour of enforcing divine law morality.

Finally, and in further support of the claim that Luther, Williams, and Goodwin's interpretation of the passages is the correct one, the alternative interpretation does not meet the other burden I mentioned above. Anyone who thinks that the enforcement of the distinctively Christian moral rules revealed in the Bible is God's mandate to the civil authorities has to meet the burden of showing how this can be reconciled with the very positive position Paul takes in his letter on the job the Roman civil authorities were doing. This is a significant

burden. It is not just that Paul fails to take the Roman civil authorities to task for not enforcing divine moral law; indeed, assuming for the sake of argument the alternative interpretation, it is easy to understand why he did not take them to task. But, even on the alternative interpretation, it is quite difficult to understand why Paul actually went so far as to commend the Roman civil authorities and confirm their standing as God's ministers, even if just within that context. Because, if that interpretation is correct, it is true that Paul would have no reason to criticize them given the secular social-political context in which the Roman civil authorities were operating. But, if the alternative interpretation is correct, it is also true that there is not any conceivable reason Paul would have had to go as far as commending them for the role they played. This does not absolutely rule out the alternate interpretation, but it does make it less likely.

The more plausible thing to think, then, is that Luther, Williams, and Goodwin's interpretation is correct and that there is not any context in which God has ordained the state as an enforcer of godly righteousness. His desire is for people to obey and serve Him willingly, as Luther, and many others have claimed. He has not authorized the state to play a role in this, and has rather limited its sovereignty to a separate sphere of human activity. Perhaps this is for no other reason than the sweetness of the gospel message and its call to obedience is soured when it is accompanied by the threat of punishment by the state.<sup>44</sup>

Whatever the reason for God's desire in this, it supports the weaker conclusion that committed biblical Christians can be politically liberal; but more importantly it also supports the stronger one that they should be. The liberal view that coercive legislation, in order to be justified, should be supported with reasons that are public in the requisite sense is therefore overdetermined, whether you include or exclude the sources of reasoning specific to the Christian religion.

## Notes

1. See, for example, Christopher Eberle *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002); Michael Perry *Under God? Religious Faith and Liberal Democracy* (Cambridge: Cambridge University Press, 2003); and the essays in Terence Cuneo (ed.) *Religion in the Liberal Polity* (Notre Dame IN: University of Notre Dame Press, 2005).
2. John Locke *A Letter Concerning Toleration* (Indianapolis IN: Hackett, [1689] 1983), 39.
3. *Ibid.*, 35.
4. *Ibid.*, 38.
5. H. L. A. Hart *Law, Liberty, and Morality* (Stanford CA: Stanford University Press, 1963), 57–58.
6. See my 'Can a good Christian be a good liberal?', *Public Affairs Quarterly*, 20 (2006), 167.
7. Patrick Devlin *The Enforcement of Morals* (Oxford: Oxford University Press, 1965), 110.
8. *Ibid.*, 14–15.
9. Basil Mitchell *Law, Morality and Religion in a Secular Society* (Oxford: Oxford University Press, 1967).
10. *Ibid.*, 34.
11. T. A. Roberts 'Law, morality and religion in a Christian society', *Religious Studies*, 20 (1984), 79–98.

12. *Ibid.*, 85.
13. *Ibid.*, 97.
14. *Ibid.*, 91.
15. *Ibid.*, 92.
16. Romans 1.28–32.
17. I Corinthians 11.13–15.
18. Matthew 5.21–30.
19. This by itself might be enough to provide a reductio of Roberts's principle, but I think there is even more to say against it.
20. Roberts 'Law, morality and religion in a Christian society', 93.
21. *Ibid.*, 94.
22. *Ibid.*, 86.
23. *Ibid.*, 90.
24. Aquinas *Selected Political Writings*, A. P. D'Entreves (ed.), J. G. Dawson (tr.) (New York NY: The Macmillan Company, 1959).
25. See my 'Can a good Christian be a good liberal?', 168.
26. As far as I am aware, nothing in the argument hangs on whether these committed biblical Christians are Protestant, Roman Catholic, or Eastern Orthodox. None of the claims that I rely on are obviously incompatible with any of these traditions.
27. Martin Luther *On Temporal Authority: to what extent it should be obeyed*; <http://www.augustana.edu/Religion/LutherProject/TemporalAuthority/Temporalauthority.HTM>.
28. Thanks to John Coffey for referring me to their discussions of Romans 13.
29. Roger Williams *The Bloudy Tenent of Persecution* (London, 1644), 81.
30. *Ibid.*
31. John Goodwin *Hagiomastix; or, the Scourge of the Saints displayed in his colours of Ignorance and Blood* (London, 1646), 61–65.
32. *Ibid.*, 62.
33. *Ibid.*, 64.
34. *Ibid.*
35. Eberle *Religious Conviction in Liberal Politics*, 146.
36. *Ibid.*, 147.
37. See *ibid.*, 104–105.
38. *Ibid.*, 183.
39. Gerald Gaus 'Review of Christopher Eberle', *Religious Convictions in Liberal Politics*, *Notre Dame Philosophical Reviews* (2003); <http://ndpr.nd.edu/review.cfm?id=1214>.
40. *Ibid.*
41. This suggestion should be distinguished from that of many who hold to postmillennial eschatology. Postmillennialism is the view that the gospel being proclaimed throughout the world will gradually come to effect the transformation and salvation of the entire world. Many who hold to this view also believe that, since the overwhelming majority of people will be Christians in the coming millennium, civil government will be in the hands of Christians who will make the laws of the land conform to Christian morality and who are democratically elected by citizens supportive of this mission. The main difference is that these postmillennialists think that the state has the divine mandate to do this within any social-political context. They just lack the political power to accomplish it for now.
42. Roberts 'Law, morality and religion in a Christian society', 89.
43. *Ibid.*, 86.
44. Some would say that it is likewise soured when it is accompanied by the threat of God's punishment. I agree. States are not the only agents who are manipulative and ineffective in presenting the gospel.