

HOW DOES CHRISTIANITY REGARD ENGLISH LAW?

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Abstract

Fifty years ago it was still possible for Richard O'Sullivan to describe English law as the practical application of Christian philosophy and ethics. Today, both Christianity in England and English law are complex, diverse and fragmented phenomena. The attitude English Christians have towards English law can be synthesist, conversionist, social justice, separatist or principled pluralist in orientation. There is therefore a range of Christian positions on questions such as the criminal law, access to justice, welfare provision, family law, human rights, life issues and sexual morality. Nonetheless, English Christians share a common thankfulness for the lack of corruption in the English legal system and for the stability of British political structures and public order. However, many have anxieties that successive governments are losing a proper sense of the limitations of their powers. If Richard O'Sullivan were writing today he would be concerned that, step by step, the political classes in Westminster may blunder into legislating away the freedoms which the reasonable Englishman and woman have enjoyed thanks to Christianity's influence on English laws and law-makers. It is to be hoped that in the century to come Christianity will continue to influence English law so that justice is available for all, the poor and the weak are protected, civil society is fostered and freedom of faith and conscience is respected.

1. Introduction

This journal was launched in 1963, at a time of legal and social change. Two decades earlier, in the midst of the Second World War, Archbishop William Temple had set out an influential vision of a Christian civilisation in *Christianity and Social Order* which provided one of the central intellectual underpinnings for the post-war consensus in British politics around the welfare state. Within a decade of this journal's launch, significant changes had been made in terms of social legislation. The shape and scope of English law in 1973 was significantly different from English law in 1943.

Since then, the inhabitants of England have been less and less governed by that confusing forest of judgments which constitutes the common law of England¹ and more and more encompassed by an ever-changing labyrinth of legislation, both statutory and subordinate. Lord Macmillan has been proved more than partially right in his prediction, delivered in 1948, that: 'There will soon be little of the common law left either in England or in Scotland, and the Statute Book and vast volumes of statutory rules and orders will take its place.'²

Richard O'Sullivan on the contribution of Christianity to English law

This journal's origins were associated with unease amongst Catholic Christians in England about the direction which English law has taken. In the previous generation, the concerns had been expressed philosophically and in literature by Hilaire Belloc and G.K. Chesterton. In legal circles, the issues were most prominently articulated by Richard O'Sullivan Q.C.. O'Sullivan delivered the Hamlyn lectures in 1950 on the title, *The Inheritance of the Common Law*.³ A representative collection of his essays was published posthumously in 1965 under the title, *The Spirit of the Common Law*.⁴

O'Sullivan's central thesis was that English law as it developed between the murder of Thomas Becket on the orders of Henry II and the execution of Thomas More (for whose canonization O'Sullivan successfully campaigned) by Henry VIII was 'the practical application of Christian philosophy and ethics'.⁵

Richard O'Sullivan was an Irish Catholic, born in Cork, the son of a ship's engineer. He looked at the English legal system with the perceptions of an outsider, and wrote about the contribution of

¹ A.P. Herbert, 'The Reasonable Man', in *Uncommon Law* (London: Bibliophile Books, 1984), 1.

² Lord Macmillan, Andrew Lang lecture on *Law and Custom*, *The Times*, 6th April 1948.

³ O'Sullivan, *The Inheritance of the Common Law* (London: Stevens & Sons Ltd, 1950).

⁴ Richard O'Sullivan, ed. B.A. Wortley, *The Spirit of the Common Law: a representative collection of the papers of Richard O'Sullivan* (Tenbury Wells: Fowler Wright, 1965).

⁵ Diplock LJ in the Foreword to *The Spirit of the Common Law*, 7.

Christianity to its development because he was acutely aware that it was, in his generation, 'moving all the time away from its origins'.⁶

O'Sullivan saw Christianity as having given to English law three mutually reinforcing ideas: the idea of the ordinary citizen as a free and reasonable man (at least until proven otherwise), the idea of the king and of government as answerable to the laws of the land and to the laws of reason and nature (which he traced back to Magna Carta),⁷ and the development of rules of contract and property which gave each family in England a degree of independence and security. The combination of these ideas was expressed in the common law which was, for O'Sullivan, 'the only great system of temporal law to come out of the Christian centuries.'⁸ Christianity had also infused into the common law a scale of values, reading from lowest to highest: 'contract, conveyance, property, bodily well-being and integrity (the sources of life), and the life of the free citizen.'⁹

O'Sullivan presented the Middle Ages as the golden period of English legal history. He saw the Henrician revolution as having destabilised the common law balance of powers in a way which led, ultimately, to the absolutism of Parliamentary sovereignty. At a time of fascist and communist tyranny, O'Sullivan praised the wisdom expressed in Christopher St. German's *Doctor and Student*, which stipulated that 'Against this law (of reason or of nature) prescription, statute nor custom may not prevail: and if any be brought in against it, they be not prescriptions, statutes, nor customs, but things void and against justice.'

O'Sullivan saw in the examples of Thomas Becket and Thomas More, and in the idea of obedience to God for which they died, the demonstration that the power of the state is limited. He wrote: 'A duty to a higher power confers a right against a lower power. If we owe a duty to God, then we have rights against the State.'¹⁰

⁶ Douglas Woodruff, 'Richard O'Sullivan', in *The Spirit of the Common Law*, 13.

⁷ O'Sullivan, *The Inheritance of the Common Law*, 82.

⁸ O'Sullivan, *The Spirit of the Common Law*, 75, 90.

⁹ O'Sullivan, *The Spirit of the Common Law*, 152.

¹⁰ O'Sullivan, *The Spirit of the Common Law*, 76, 105.

Christianity in England today

As this journal celebrates its fiftieth anniversary it is appropriate to revisit the question of the relationship between Christianity in England and English law, and to ask how Christianity regards English law today. Much has changed in the last fifty years. The content and sources of English law have changed. O'Sullivan and Temple were writing before the liberalising social legislation of the 1960s, before Britain's accession to the European Economic Community (now the European Union), before anti-discrimination legislation, and before the Human Rights Act 1998.

Christianity in England has also changed. The assumption that an English man or woman was C of E unless otherwise stated no longer holds true. Whatever truth there ever was in the observation that the Church of England is 'the Conservative Party at prayer' has now gone (not least because the mainstream political parties have suffered a collapse in active membership even more dramatic than the Church of England). Even if Catholics were no longer regarded in the middle of the twentieth century as owing a potentially treacherous allegiance to a foreign power, Catholicism did not hold the place in public life which it now enjoys in the early twenty-first century. Catholicism in England today is different in itself from fifty years ago. Its theology is shaped by the seismic shift in the Church's thinking announced at Vatican II. Its constituency is no longer solely a mixture of recusant families and Irish immigrants but includes many who have taken advantage of the freedom of movement within the European Union to come to the UK as well as those High Church Anglicans who have 'turned to Rome'. There are Orthodox Churches in England, some attended by Greek-speaking immigrants and former Anglicans in search of an alternative historic church which is not Roman Catholic, and others by Russian speakers.

Perhaps the most dramatic change of all in the composition of Christianity in England has been in what have been called the Protestant, Dissenting, Non-Conformist or Free Churches. Each of these labels defines those churches primarily by what they are against: protesting against the abuses which they saw in the mediaeval Catholic Church, dissenting from the Act of Uniformity 1662 and refusing to

conform to the requirement that divine worship be celebrated in accordance with the Book of Common Prayer, or insisting on the freedom of the Church from the control and interference of the State. In early twenty-first century England at least, the protest against Roman Catholic practice and theology no longer forms a major part of the self-identity of these churches. Nor is their rejection of liturgy a defining feature of their theology. What keeps them separate is their insistence on freedom: on freedom of worship, on freedom of conscience for the Church, the individual congregation and the individual, and on freedom from control and interference by government.

The greatest change has not been in how the Free Churches relate to the Church of England and to the Roman Catholic Church but in the nature of Free Church Christianity itself. The twentieth century saw a spectacular collapse in English Non-Conformism (outdone only by the emptying of the chapels in Wales) but also the rise of newer churches, some entirely independent and others with links to international church groupings. The Congregational and Presbyterian churches (now largely combined as the United Reformed Church) have dwindled almost to nothing. Methodist church congregations are not viable in many parts of the country and rapprochement with the Church of England is on the way. In small towns and villages Baptist churches are also struggling. The situation is different in London and in the large cities. Here the Baptist denomination is growing, as immigrants and their children join Baptist churches or as black majority churches seek to find a place within the English Christian scene by adopting the Baptist label. This change is outweighed in its significance by two others: the rise of churches linked to international church groupings and of independent churches. The late twentieth century witnessed the phenomenon of reverse missionaries, as countries to whom English Christians once took the Christian message sent workers to re-evangelise England. Immigrant communities formed churches with links to denominations in other countries, whether in the United States of America (the New Testament Church of God), Australia (Hillsong), Brazil (Universal Church of the Kingdom of God), Nigeria (the Redeemed Christian Church of God) or Korea. The growth in independent churches has had two sources: one a plea made by Dr Martyn Lloyd-Jones in 1966 for evangelical Christians to leave their

‘mixed’ denominations, the other a combination of entrepreneurial spirit and suspicion of institutions which has seen people unwilling to recognise the need to identify visibly with the universal Church.

In contrast to its continued growth in many parts of the world, Christianity, at least in terms of active attendance, has been in decline in Britain during the past 50 years. But as well as the drift of increasing numbers of white Britons away from the established churches of England and Scotland and the historic non-Conformist denominations of the Baptist, Presbyterian, Congregational and Methodist churches, there has been an explosion in the numbers of black, Chinese, Korean, Tamil and other non-white Christians in Britain.

Another theological development has affected all parts of the church. Writing in *The Blackwell Companion to Political Theology*, Goizueta observes: ‘As one looks back on upon the last third of the twentieth century, the theological insight that has arguably had the greatest impact on the life of the church is the notion that the God of Jesus Christ is revealed in a privileged, preferential way among the poor and marginalized peoples of the world – a notion at the very heart of the Gospel itself. There is not a single corner of the Christian world that has not felt the impact of the renewed attention to that claim ...’¹¹ Even in the West, the Roman Catholic Church has been challenged by the writings of the liberation theologians. David Sheppard, the Anglican Bishop of Liverpool wrote *Bias to the Poor*¹² in which he argued that the Gospel is both about changing people from the inside out and changing the course of events to set people free. The *Poverty and Justice Bible* highlights (literally) how central themes of economic oppression and injustice are to the biblical story. Evangelicalism has recovered from its pietistic allergy to the social gospel and both the Anglican and Free Churches now think, speak and act in terms of holistic and integral mission.

The considerable changes both in English law and in English Christianity mean that, in 2013, answering the question: how does

¹¹ Roberto S. Goizueta, ‘Gustavo Gutiérrez’ in P. Scott and W.T. Cavanaugh, eds. *The Blackwell Companion to Political Theology* (Oxford: Blackwell, 2004), 299.

¹² David Sheppard, *Bias to the Poor* (London: Hodder & Stoughton, 1983).

Christianity regard English law?, requires one to specify which manifestations of Christianity and which aspects of English law are under discussion.

Attitudes of English Christians towards Culture and the State

From the description given so far the reader would be expecting a discussion of differing aspects of English law from the perspectives of the Church of England, the Roman Catholic Church and the Free Churches. However, matters are not so simple. It is trite to observe that the Church of England has its liberal, evangelical and Anglo-Catholic wings, that within English Catholicism there are both liberal and traditional tendencies, and that amongst the Free Churches there are Pentecostal/Charismatic, conservative evangelical and liberal congregations. It seems to me, however, that these distinctions are not what drive the way in which Christians and Christian churches regard English law. The principal factors which affect how Christians regard English law are twofold: how Christians regard culture and how Christians regard the State.

How Christians regard culture

The dominant analyses of how Christians regard culture were forged outside of England. The German sociologist, Ernst Troeltsch famously divided churches into three types: the church type, the sect-type and the mystical.¹³ The description was a loaded one in the German context, affirming the Lutheran, Reformed and Catholic churches as integral to German culture and the free churches as separatist and subversive (in the way that the Anabaptists of Münster were in German cultural memory).

In the United States of America, a German émigré, H. Richard Niebuhr, wrote *Christ and Culture*.¹⁴ In that book he argued that Christians tend to adopt one of five differing stances towards culture. Separatists see Christ as against Culture. They emphasise the call of Christian disciples to be distinctive from the world around them. They adopt a quietist approach towards politics but would much prefer a government

¹³ Ernst Troeltsch, *The Social Teachings of the Christian Churches* (1912), Eng. Tr. by Olive Wyon (Louisville, KY: Westminster John Knox Press, 1931).

¹⁴ H. Richard Niebuhr, *Christ and Culture* (New York: Harper Torchbooks, 1956).

which did not interfere with their internal affairs. Accommodationists, by contrast, see no contradiction between Christ and culture. Because they understand Christ to be the highest aspiration and fulfilment of culture, they pursue strategies which show Christianity to be fully compatible with the thought-forms of culture. Synthesists follow Thomas Aquinas in understanding Christ to be above culture. God created human culture and works within it by the Spirit. The Church neither rejects nor embraces human culture wholesale but discerns how to promote that which is best within human culture. Dualists see an irresolvable tension between Christ and culture. They believe that the sword and the law is an indispensable, but regrettable, necessity. Conversionists picture Christ as the transformer of culture, and that Christian influence can, in principle, shape a culture for good in significant ways.

Although Niebuhr's analysis of culture is not perfect, it continues to dominate the field. When Yale University Press published a volume of *Christian Perspectives on Legal Thought* at the turn of the millennium, the approaches to law were grouped under the headings: Synthesists whose aim was to reconcile Christ and law, Conversionists who envisaged Christ transforming law, Separatists who saw Christ against law, and Dualists who regarded Christ and law as being in tension with one another.¹⁵ Examination of the essays grouped under those headings indicated that the Synthesists were Catholics, the Conversionists were Calvinist, the Separatists were inspired by the Anabaptists and the Dualists were Lutheran.

How Christians regard the State

It is not only how Christians view culture which affects how they regard the law, it is also their attitude towards the State. The term 'the State' has multiple meanings: it could describe the government, the government and its subjects taken together, or the nation. When asking how Christians regard the State, one is asking whether Christians regard the government as exclusively the servant of English society, or whether they see government as also representing English society, or whether they think of government as responsible for embodying the

¹⁵ Michael W. McConnell et al, eds., *Christian Perspectives on Legal Thought* (New Haven, CT: Yale University Press, 2001).

values of the historic traditions of the English nation.

In the American context, the perspectives of contributors to 2007 book *Church, State and Public Justice: Five Views*,¹⁶ were categorised as Catholic, Separationist, Principled Pluralist, Anabaptist and Social Justice. The view described as Catholic identifies the role of government as the attainment of the common good and the pursuit of justice, measured by reference to the maintenance of social order and the condition of the poor.¹⁷

The view described as Separationist denies the state any competence in religious matters, insisting that 'the right of every person to believe and practice his or her faith without coercion or interference from government ... can only be protected by a strong commitment to the separation of church and state.'¹⁸ This does not mean that religion has no role to play in public life but it does mean that the 'institutions of church and state' should 'not be interconnected, dependent on or functionally related to each other.'¹⁹ As a consequence, separationists reject the idea of government funding of the work of churches and other religious groups in the fields of education and charity.

The view described as Principled Pluralist sees the state as one of a number of social institutions amongst which God has distributed authority and which pursue distinctive goals. Families, churches, hospitals, schools, businesses etc. each have their own distinctive good. The role of the state is to make rules which enable each of the other social institutions to flourish, to adjudicate justly when the social institutions come into conflict with one another, and to protect the weak within each social institution.²⁰

The view described as Anabaptist affirms that government is a good

¹⁶ P.C. Kemeny, ed., *Church, State and Public Justice: Five Views* (Downers Grove, IL: IVP, 2007).

¹⁷ Clarke E. Cochran, 'Life on the Border: a Catholic Perspective', in *Church, State and Public Justice*, 47.

¹⁸ Derek H. Davis, 'The Classical Separation Perspective', in *Church, State and Public Justice*, 82.

¹⁹ Davis, 'The Classical Separation Perspective', 103.

²⁰ Corwin Smidt, 'The Principled Pluralist Perspective', in *Church, State and Public Justice*, 136.

gift ordained by God, tasked with restraining evil and promoting good, but balks at its justification of killing. Contemporary Anabaptists acknowledge that 'some forms of coercion are fully compatible with love and respect for the other person as a free moral agent' but reject lethal violence because it is not. It follows that a Christian cannot take on the roles of either a judge (where the death penalty exists) or a soldier because to do so would be to require them to act contrary to the teaching of Jesus.²¹ On the other hand, despite the shadow of the State's power to coerce, contemporary Anabaptists affirm government's role in coordinating and organizing communal activity to promote the common good through the provision of health insurance, education, roads, Social Security and assistance to the poor and needy.²²

The view described as Social Justice defines the state in expansive terms, as 'society acting as a whole'.²³ It sees government as having a central responsibility for enacting laws which make it possible for each citizen, 'to be, fully and actively, a social being, a member of the community.'²⁴ This view emphasises that the Church should be concerned with people's material conditions as well as the state of their souls. The Church should partner with government and challenge government to build an inclusive society in which everyone is treated with dignity and respect and enjoys substantial opportunities to enjoy a fulfilling life.

A complex Venn diagram could be constructed showing how the five views of Christians with regards to culture: Separatist, Accommodationist, Synthesist, Dualist and Conversionist and the five views of Christians with regards to the state: Catholic, Separationist, Principled Pluralist, Anabaptist and Social Justice overlap with one another. It may, perhaps, be more helpful to see them as points on a compass towards which different Christian positions tend to approach.

²¹ Ronald J. Sider, 'The Anabaptist Perspective', in *Church, State and Public Justice*, 181.

²² Sider, 'The Anabaptist Perspective', 185.

²³ J. Philip Wogaman, 'The Social Justice Perspective', in *Church, State and Public Justice*, 216.

²⁴ Wogaman, 'The Social Justice Perspective', 221.

The attitude of English Christians towards English law

As already indicated, English Christianity is different in composition from other countries because of the presence of an established Anglican church, a vibrant Catholic church and significant, though rapidly changing, Free Churches. The particular nature of Christianity in England has led Christians in England to gravitate towards one of five basic attitudes: synthesist, conversionist, social justice, separatist, or principled pluralist.

2.3.1. A synthesist attitude

A synthesist attitude may be held by an Anglican who believes that establishment gives the Church of England a distinct position to ensure that Christian values continue to shape England's social institutions including its laws, or by a Catholic who sees the contribution of the mediaeval Church to the common law as still echoing down the centuries. It appears to be particularly popular with recent Prime Ministers. Tony Blair found it politically astute to keep silent about his deeply held religious beliefs whilst in office but is now happy to promote the cause of faith. He gives no sign of experiencing a tension between what his Christian conscience required him to do and the choices he made whilst Prime Minister. Gordon Brown spoke of his upbringing in a Scottish manse as having given him his moral compass. Most recently, in a speech commemorating the 400th anniversary of the King James Bible, David Cameron declared that Britain was a Christian country, one in which 'the Bible has helped to give Britain a set of values and morals which make Britain what it is today.'²⁵ Cameron went on to identify the values we treasure as '[r]esponsibility, hard work, charity, compassion, humility, self-sacrifice, love... pride in working for the common good and honouring the social obligations we have to one another, to our families and our communities'. In a manner worthy of the Thomist natural law tradition, he both affirmed that these were Christian values which have become British values because of its Christian heritage, and asserted that 'they are also values that speak to us all – to people of every faith and none.'

²⁵ Cameron, 'Prime Minister's King James Bible Speech', <http://www.number10.gov.uk/news/king-james-bible/>

The danger with the synthesist position is its tendency to slide into accommodationism, to reverse the equation so that instead of Christian values becoming British values, British values are proclaimed as Christian values. This danger is particularly acute when Christian values are defined and presented in a way which empties them of their distinctively Christian content.

2.3.2.A conversionist attitude

A conversionist attitude will be held by a Christian who believes that England was once persuaded to reflect the Christian worldview in its institutions and now is in the process of de-converting. By highlighting the particular contribution of Christianity to English law, politics and values they hope to show how those values will be undermined if their Christian roots are disregarded. This was, in his own time, O'Sullivan's approach. Today, the agenda of showing how Christianity has contributed to English politics is pursued at a popular level by Nick Spencer of the *Theos* think tank,²⁶ and in academic circles by the Anglican intellectual heavyweight Oliver O'Donovan. Nick Spencer identifies the Bible as the main source of the British conceptions of nationhood, due process of law, of the ideal of politics as service, of democracy, of equality and of toleration.²⁷ O'Donovan has engaged in two projects. First, in collaboration with his wife, Joan Lockwood O'Donovan, he has digested Christian political thought *From Irenaeus to Grotius*²⁸ and argued that this tradition of Christian political thought bequeathed to the West the principles of freedom, mercy in judgment, natural right and openness to speech.²⁹ Second, armed with the intellectual long-view, he has presented a sophisticated political theology for our time.³⁰ O'Donovan presents powerful arguments that only renewed attention to the theological roots of our most cherished

²⁶ See especially Spencer, *Freedom and Order: History, Politics and the English Bible* (London: Hodder & Stoughton, 2011).

²⁷ Nick Spencer, 'The Bible and Politics: Christian sources of British political thought', *Cambridge Papers* 21(2) (2012).

²⁸ O'Donovan and Lockwood O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100-1625* (Grand Rapids: Eerdmans, 1999).

²⁹ O'Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), 133-146.

principles will protect us against the perennial threat of tyranny.

2.3.3.A social justice attitude

A social justice attitude may be held by a Christian, of whatever denomination, who is embarrassed by what is perceived to be the Church's narrow agenda focused around traditional life issues and questions of sexual morality, or by one who takes it for granted that the Bible's emphasis on justice translates directly into a demand that the state should do more for the most vulnerable in society. There is no doubt that issues of social justice are of increasing importance for Christians in Britain today. However, whereas American Christians are often alive to the dangers of big government, too often English Christians concerned about social justice fail to consider whether the remedy of increased governmental intervention may be worse than the cancer of injustice which it purports to address.

2.3.4.A separatist attitude

A separatist attitude will be held by a Christian who believes that either because Christendom was always a bad idea or because it is no longer a practical possibility, the best that can be hoped for are laws which do not actively persecute Christians. In England, the separatist attitude does not take either of the American forms of separationism or Anabaptism. Instead, it tends to arise from a remnant theology, which assumes that the world is inevitably going to descend into moral chaos and the best that can be hoped for is that a minority of Christians will be protected sufficiently to cling on till the end.

2.3.5.A principled pluralist attitude

A principled pluralist attitude will be held by a Christian who believes that one of the most significant parts of the Church's mission to the State, for the benefit of all the citizens of the nation, is to insist on the limits of the State's power and on the liberties of other social institutions. Principled pluralism is an idea which has its roots in Dutch

³⁰ O'Donovan, *The Desire of the Nations; The Ways of Judgment* (Grand Rapids: Eerdmans, 2005); McIlroy, *A Trinitarian Theology of Law: in conversation with Jürgen Moltmann, Oliver O'Donovan and Thomas Aquinas* (Carlisle: Paternoster, 2009), chapter 3.

Neo-Calvinism.³¹ Its most prominent advocate in England today is Jonathan Chaplin, Director of the Kirby Laing Institute for Christian Ethics in Cambridge.

Principled pluralism uses the rhetoric of equality and diversity to articulate its position. It offers interesting, and sometimes ingenious, routes through contemporary issues. For example, in relation to the current discussion regarding gay marriage, Chaplin has proposed that this be addressed by separating civil marriage (which is the sole concern of the state) from Christian marriage.³²

Principled pluralism would provide greater areas of freedom for social institutions and less domination of society by government. There would be significant benefits in terms of empowerment and a greater role for civil society. However, the possible disadvantages of principled pluralism are that there would be less universal provision by the State and less integration, with the risk of people existing from cradle to grave in parallel social arrangements.

Attitudes of English Christians towards English Law

So far in this essay I have sketched how Christianity in England has changed in the last fifty years and I have suggested that English Christians today tend to gravitate towards one of five different positions: synthesist, conversionist, social justice, separatist or principled pluralist. In the remainder of this essay I want to examine how English Christians holding these views tend to regard English law. Considerations of space make it impossible to offer a comprehensive view, so I have chosen to focus on those areas which are most illuminating.

A legal system uncorrupted

English judges may sometimes be bad in the sense of being foolish but they are, almost without exception, not bad in the sense of being corrupt. English juries may occasionally give silly verdicts but they are rarely ‘nobbled’. The Bible emphasises in numerous places the

³¹ Chaplin, *Hermann Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011).

³² Chaplin, ‘A Time to Marry – Twice’, (2012) 18(2) *Ethics in Brief*.

importance that laws should be justly administered and that the political and legal systems be as free as possible from bribery and corruption.³³ In comparison with many places throughout time and history, the English legal system is still remarkable today for its integrity. The reliability of its outcomes and robustness of its processes are important reasons why so many international commercial contracts are made subject to English law and to the jurisdiction of the English courts.

English Christians, whether synthesists, conversionists, advocates of social justice, separatists, or principled pluralists, can affirm that the integrity of the English legal system is a considerable blessing to the inhabitants of England. It remains an inspiration to many countries in the world.

A Stable Public Order

Despite his commitment to social justice, Archbishop William Temple wrote: 'Now the most fundamental requirement of any political and economic system is not that it shall express love, though that is desirable, nor that it shall express justice, though that is the first ethical demand to be made upon it, but that it shall supply some reasonable measure of security against murder, robbery and starvation.'³⁴

In comparison with many other legal systems in the world, English law is effective at maintaining public order. In 2010-11 there were just 636 killings in England and Wales, a rate of just 0.00115%, a level 30 times lower than that of South Africa. Levels of violent crime are relatively low and serious social disorder reassuringly rare.

Discrimination legislation

The laws against race, sex and disability discrimination (now brought together with others in the Equality Act 2010) are one of the changes to English law universally welcomed by English Christians. They have done much to prevent the most egregious forms of discrimination, particularly the offensive comments that women, non-white people and the disabled used to have to endure. They remain, however, conspicuously less successful at addressing the cumulative

³³ For example, 1 Kings 10:9; 2 Chronicles 9:8; Jeremiah 21:12.

³⁴ Temple, *Christianity and Social Order* (London: Shephard-Walwyn, 1942, 61.

disadvantages which mean that young black men are more likely to be out of work than to have a job.³⁵ Discrimination legislation remains an example of what can and cannot be achieved through legislation alone. Moreover, some English Christians are concerned that the idea of equality is being used to promote a new public morality which is both overly prescriptive and, in some respects, at odds with the traditional moral teaching of the Churches.

The rule of law

Christianity affirms English law because even Christian separatists understand from the Bible that law is preferable to anarchy and tyranny. Law, in the sense of a commonly understood set of rules providing the minimum standards of behaviour, is necessary for any society to function and to flourish. The rules of English law on questions such as weights and measures, on how to buy and sell houses, about which side of the road you drive etc., all these things enable human beings to live better lives because there is a legal framework in place.

Law can open up opportunities for human flourishing. Those opportunities are greatest when the governed can be assured that those who hold power are also bound by the same rules. Writing at a time of fascist and communist dictatorship, O'Sullivan emphasized the importance of the rule of law and of the sense that the executive (the King) and the legislative should be held accountable to the standards of the laws of God, of reason and of nature.

The rule of law is or ought to be of concern to all Christians in England, whether they tend towards the synthesist, conversionist, social justice, separatist, or principled pluralist position. There is, however, no consensus about how the rule of law is to be secured within the balance of powers. Party politics means that Parliamentary scrutiny of legislation in the House of Commons is often poor. The widespread use of primary legislation which grants government departments extensive powers to issue subordinate legislation strengthens the power of the

³⁵ James Ball, Dan Milmo and Ben Ferguson, 'Half of UK's young black males are unemployed', *The Guardian*, 9th March 2012, available online at <http://www.guardian.co.uk/society/2012/mar/09/half-uk-young-black-men-unemployed> (Accessed 13th January 2013).

Executive and weakens accountability to Parliament still further. This leaves the courts making the best they can of primary legislation and exercising judicial review over secondary legislation.

Reading O'Sullivan one gets the impression that he would have looked favourably on the idea of a Bill of Rights and of intensive judicial review of the actions of government and Parliament. For him this would have represented a measure of a return to the golden age of the common law, with judges once again checking the actions of rulers against the standards of reason and of natural rights (now in the guise of human rights).

There are, however, Christian thinkers such as Joan Lockwood O'Donovan who raise concerns that powerful, unaccountable, unrepresentative judiciaries have, in countries such as the United States of America and Canada, subverted the collective will of the people by making political decisions in the courtrooms. For the conversionist and the separatist, recent experiences of Christians in the courtroom (perhaps most notably *Islington LBC v Ladele* [2009] IRLR 154 and *R, on the application of Johns v Derby City Council* [2011] 1 FLR 2094) inspire little confidence that the judges, ignorant of or hostile to the Christian contribution to English law, are minded to uphold the ideals of freedom of conscience and the limits of government which are highlights of English legal history.

English criminal law

There are few, if any, areas of law which it is more important for people to know and understand than the criminal law. The criminal law consists of two parts: the general criminal law which sets out the basic conduct which the inhabitants of England must all observe and specialist criminal law which establishes criminal penalties in specific areas of activities, e.g. the criminal offences in the area of financial services, fisheries, medicine or whatever.

English criminal law was never entirely a creature of the common law but it did, both through the existence of common law offences and through the use of juries, track English social morality to a certain extent. It was also, however, marred by an emphasis on property rights at the expense of the needs of the poor and starving, which was in

contradiction with the biblical and patristic scale of values. From the Bill of Rights 1689 until shortly before the beginning of Queen Victoria's reign in 1837, English law became a bloody code with over 200 capital crimes, whose legislators had 'made justice a potentially fatal lottery by casually enacting new capital felonies'.³⁶

Today capital punishment has been definitively abolished. English criminal law is no longer a creature of the common law nor is it codified. In many civil law systems, the general criminal law is set out in a criminal code. A single volume spells out all the criminal offences which an ordinary citizen might commit. Someone in possession of that volume is able to identify for themselves whether or not they are breaking the law. Some countries, Albania for example, go further and specify that the criminal code always contains all the criminal offences under that country's law.

Without exaggerating the danger, there is a risk to the rule of law resulting from the fact that an inhabitant of England has no easy way of identifying which criminal offences they may be in danger of committing. Moreover, the bewildering changes to criminal law and to criminal sentencing have included moves away from making the punishment fit the crime towards locking up criminals and throwing away the key in the name of public protection.

There is an internal debate within Christianity about whether Christian theology demands retributivism or instead promotes a model of restorative justice. There is widespread concern, however, that the current practices of imprisonment do not lead to optimal outcomes either for offenders or for the wider community.

Access to justice

In early twenty-first century Britain the National Health Service is a treasured national institution, in spite of some high profile scandals. The English legal system is not regarded in the same light. The Legal Aid Sentencing and Punishment of Offenders Act 2012 ('LASPO') introduced significant changes to the funding of litigation in April 2013. This Act has seen the abolition of legal aid for almost all civil

³⁶ Phil Handler, 'Forgery and the End of the "Bloody Code" in Early Nineteenth-Century England', (2005) 48 *The Historical Journal*, 686.

cases. Whilst the legislation may pursue a legitimate political goal in seeking to reduce disproportionate legal costs being spent on minor disputes it goes far beyond that. LASPO risks depriving significant numbers of English citizens of access to civil justice.

Christians who advocate for social justice emphasise that the law should protect the weak and the vulnerable but this is a biblical theme which those holding to other positions also frequently endorse. It is a particular feature both of Catholic Social Teaching and of principled pluralism. The Bible exemplifies the poor and the vulnerable in the figures of the widow, the orphan and the foreigner.³⁷ The Torah is clear that the poor should have effective access to the courts and should be given a fair hearing.³⁸

The synthesist, conversionist, advocate of social justice, and the principled pluralist should all be concerned when the poor are shut out from the practical ability to enforce the protections of English law. Moreover, Christians who advocate social justice are already campaigning on behalf of those who do not enjoy the full benefits of English law because, as asylum seekers, they are subjected to a punitive regime.

Welfare

When the common law was developing, parents were responsible for the education of their children, and the Church and the guilds offered assistance to as many as they were able. The involvement of the State in education is a comparatively recent development, stemming from the Education Act 1870. In the Middle Ages, it was also the Church and not the State which was the major provider of health care.

What has changed today is not just that the State provides universal coverage in the areas of health and education but that it sees itself as having the right to do so as the primary provider. In fact, contemporary political rhetoric seems to indicate that England no longer conceives of itself as a just state but rather as a welfare state. Protecting the budget of

³⁷ Exodus 22:21-23; Deuteronomy 27:19; Psalm 82:3; Zechariah 7:9-10; James 1:27.

³⁸ Exodus 23:6; Leviticus 19:1.

the NHS is a higher priority than ensuring that there are sufficient police to enforce order on the streets, and certainly more important than providing legal aid to enable the victims of wrongs to obtain legal redress.

The combination of the State's self-understanding as the guardian of the nation's welfare and its financial power resulting from the centralised nature of British taxation means that 'The terms of collaboration between the state and religious bodies in education and social welfare are increasingly dictated by the state, rather than being negotiated between partners conceived of as equals, and they are increasingly difficult to comply with.'³⁹

The English constitutional settlement brought about by the Glorious Revolution and the increasing toleration of those who did not belong to the Anglican church were built on John Locke's idea of a boundary between the public and the private.⁴⁰ What has changed since Locke's time is the scope of the public. Both the range and the intensity of what the state regulates has changed beyond all recognition in the last 160 years. Joan Lockwood O'Donovan identifies what she calls 'the inflation of what belongs to Caesar in democratic civil religion, its capacity to tyrannize society like some Jacobin-at-large.'⁴¹

Separatism, conversionism and principled pluralism all insist that there are limits to regulation by law. They place a stress on the importance of freedom, separatists in defence of distinctively Christian lifestyles, conversionists and principled pluralists as a bulwark against tyranny.

Family

Sir Henry Maine observed as long ago as 1861, 'the unit of an ancient society was the family; of a modern society, the individual'.⁴²

³⁹ Julian Rivers, 'Is English law Christian?' in Nick Spencer ed. *Religion and Law*, (Theos London 2012) 148.

⁴⁰ McIlroy, 'Locke and Rawls on Religious Toleration and Public Reason', (2012) *Oxford Journal of Law and Religion* 1-24

⁴¹ Lockwood O'Donovan, 'Nature, State and Civil Society in the Western Biblical Tradition', in Oliver O'Donovan and Joan Lockwood O'Donovan, *Bonds of Imperfection: Christian Politics, Past and Present* (Grand Rapids, MI: Eerdmans, 2004).

⁴² Quoted in O'Sullivan, *The Spirit of the Common Law*, 82.

O'Sullivan made family the focus of the second of his Hamlyn lectures and claimed that: 'The effort and achievement of the Common Law was ... to establish in England an association of families of free and responsible and independent men and women living in the fellowship of a free community.'⁴³

This achievement of English law in raising the status of the villeins was, however, not sustained. The victory of Parliament over royal absolutism in the seventeenth century was not, for all that, a victory for the English smallholder and the ordinary English family. On the contrary, O'Sullivan's reading was that 'The general drift of property in the sixty years after 1690 was in favour of the large estate and the great lord', a programme of confiscation via the Enclosure Acts which was made possible by Acts of a Parliament which was 'now beginning to think of itself as Omnipotent and above the moral law'.⁴⁴

In the fifty years since O'Sullivan was writing, English family law has changed significantly. English divorce law has been liberalised, and a far wider range of services and benefits made available to those who are not or who are no longer married. On the question of family law, English Christians are divided between those who see the current laws as too permissive and those who think that family law must reflect the realities of people's domestic arrangements. There are respects in which the current tax and benefit system discriminates against those who are married and particularly against households where one party is in paid work and the other is committed to child care. English law rightly protects against domestic abuse and patriarchy but seems to do so at the expense of undermining the stability of the family unit. Moreover, the structure of the welfare state seems to work against rather than rewarding the provision of care by family members for one another. In these and other respects, English law as it relates to families is sub-optimal. However, for those who are critical of current English law there is the difficult task of articulating a credible alternative, a pro-family policy which protects family life in a way which is not patriarchal and which does not penalise those who find themselves parenting alone.

⁴³ O'Sullivan, *The Spirit of the Common Law*, 84.

⁴⁴ O'Sullivan, *The Inheritance of the Common Law*, 27.

Human Rights

One of the greatest symbolic changes to English law in the last 50 years was the adoption of the Human Rights Act 1998 which gave the European Convention on Human Rights direct effect within English law. Christians were prominent in the push to adopt international Declarations and Conventions on human rights in the aftermath of the Second World War. As Julian Rivers has written: ‘The Christian natural law tradition arguably reached its fulfilment in the Universal Declaration of Human Rights and the mid-twentieth century human rights movement more generally.’⁴⁵ Vatican II affirmed the importance of the rights of conscience in its ‘Declaration on Religious Liberty’ *Dignitatis Humanae*. The Catholic philosopher John Finnis described the modern language of rights as ‘a supple and potentially precise instrument for sorting out and expressing the demands of justice’.⁴⁶ More recently, Catholic writers such as Roger Ruston have argued that human rights find their basis in the fact that human beings are created in the image of God.⁴⁷ The American Reformed Christian philosopher, Nicholas Wolterstorff, writing from a principled pluralist position, has asserted that human rights can only be adequately grounded in an understanding that human beings have worth because they are loved by God.⁴⁸

Yet despite the undoubted Christian contribution to the development of human rights, within English Christianity attitudes towards human rights are sharply divided. At the popular level, this may have much to do with the perception that human rights are made and enforced by the European Court of Human Rights in Strasbourg and by the institutions of the European Union in Brussels and that they are somehow ‘foreign’.

The intellectual case against human rights theory is considerably more sophisticated. From the conversionist perspective of Joan Lockwood O’Donovan the language of rights is irredeemable because the concept of human rights is inescapably associated with the modern

⁴⁵ Julian Rivers, ‘Is English law Christian?’ *op.cit.* 147.

⁴⁶ Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon, 1980), 210.

⁴⁷ Roger Ruston, *Human Rights and the Image of God* (SCM, 2004).

⁴⁸ Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008).

philosophical perspective of 'possessive individualism'. Human rights are inevitably conceived of as 'things which belong to me'.⁴⁹ This account of the nature of human rights appears to be confirmed by the highest authority within English legal philosophy, H.L.A. Hart. In 1955, he wrote: 'Rights are typically conceived of as *possessed* or *owned by* or *belonging to* individuals and these expressions reflect the conception of moral rules as not only prescribing conduct but as forming a kind of moral property of individuals to which they are as individuals entitled; only when rules are conceived in this way can we speak of *rights* and *wrongs* as well as right and wrong actions.'⁵⁰

Lockwood O'Donovan argues that human rights are always conceived of as rights of ownership, ownership over things in creation, and ownership of one's own acts (i.e. the right to freedom). People come to see themselves as owners of themselves, having the right to do what they want with their bodies, their time and their possessions, free from any limitations imposed on them by nature or by anyone else. The State is perceived as the facilitator of their every desire and as the guardian protecting the exercise of their will from interference from anyone else. This leads to rights being asserted as claims by individuals, to the detriment of wider society. The logical conclusion, Lockwood O'Donovan argues, is that rights will be claimed to everything which can be the object of human desire and possession. What gets squeezed out in the clamour for more and more rights are the shared goods of community. The common good is destroyed and dissolved in a welter of assertions of individual claims.

Another conversionist, John Milbank, sees human rights theory as fatally undermined by its lack of a reference to God. Human rights were conceived as a means of limiting the power of the state yet, once God is shut out of the picture, they are 'only operative and recognized – and therefore existent – within the State'. Although they are supposed to limit the state, in fact, in their very declaration the state assumes to

⁴⁹ Lockwood O'Donovan, 'The Poverty of Christ and Non-Proprietary Community', in Torrance and Banner eds. *The Doctrine of God and Theological Ethics* (Edinburgh: T&T Clark, 2006), 192.

⁵⁰ Hart, 'Are there Any Natural Rights?', (1955) 64 *Philosophical Review* 175-91, emphasis original.

itself the power to define nature, and thereby to say what rights nature has and has not given to human beings.⁵¹

Wolterstorff's response to Milbank would be that human rights theory is indeed incomplete if it does not find its grounding in God but that such a grounding can be added as a necessary supplement without overturning the idea of human rights entirely. As for the accusation of possessive individualism, Wolterstorff concedes that this is indeed a prominent feature of contemporary rights discourse but that it represents a disease which has infected the language of rights rather than an incurable flaw in its very nature. Rights are neither possessions nor inherently individualistic. Instead, he argues that rights are not things at all, but rather a form of 'normative social relationships: sociality is built into the essence of rights. A right is [always] a right *with regard to* someone'.⁵²

Conversionists tend to oppose the language of human rights whereas principled pluralists seek to reform it. Both, however, share the concern that, in its current form, human rights theory contributes to the belief that it is the sole or primary responsibility of the state to satisfy all my needs and to provide for all my rights as an individual. So it is to the state rather than to my extended family or my neighbours that I look for care when I am suffering with a long-term illness. This gives rise to claims against state agencies which judges are called upon to decide or to appeals made to judges, as representatives of the state, to vindicate my rights against others. The result, paradoxically, is that the intervention of the state to protect human rights results in less not more freedom. Principled pluralism seeks to address this tendency by insisting that social institutions also have rights which government does not confer but merely acknowledges⁵³ whereas conversionists assert that we need to understand our relations with one another in terms of goods not rights.

⁵¹ Milbank, *Being Reconciled: Ontology and Pardon* (London: Routledge, 2003), 97.

⁵² Wolterstorff, *Justice: Rights and Wrongs*, 4.

⁵³ Wolterstorff, *The Mighty and the Almighty: An Essay in Political Theology* (Cambridge: CUP, 2012), 158.

Synthesists such as Conor Gearty⁵⁴ and advocates for social justice see Christian thinking and human rights theory as sharing a largely overlapping agenda. Separatists and principled pluralists are prepared to use the language of human rights as a means of articulating their views. Prominent conversionists, however, reject the language of human rights as irredeemable at least at the level of moral philosophy. Unlike his wife, Oliver O'Donovan concedes that it is perfectly appropriate to use the language of rights in the law-courts. Nonetheless, he regards the idea of moral rights as a fundamental building block of morality as a modern heresy.⁵⁵

A synthesist, a conversionist and a principled pluralist might all be able to agree that the problem with human rights today is the cultural context in which they are asserted and litigated. Although human rights only make sense as objective limits on aggression and interference by the state and others in the light of human dignity and a universal moral order,⁵⁶ they are wielded as weapons in pursuit of an agenda of unrestricted individual choice. This coheres with an account of human dignity which regards 'our basic moral worth as human beings' as inhering in our ability to create our own identities.⁵⁷ The result is that human rights are used as an essential instrument in the liberation of human beings from the law of God and the moral law.⁵⁸

Life Issues

It would be easy to tell the story of the legislative changes in the 1960s as a story of English law abandoning its Christian roots but it has to be recognised that many of the changes were made with the blessing of liberal Christians and Churches and were largely met with silence by evangelical churches whose focus was exclusively on "proclaiming the gospel".

⁵⁴ Gearty, 'Human rights – does faith matter?', in Spencer ed. *Religion and Law* 109-116.

⁵⁵ O'Donovan, *The Desire of the Nations*, 247.

⁵⁶ Both of which depend on the nature and character of God, see Wolterstorff, *Justice: Rights and Wrongs*.

⁵⁷ Julian Rivers, 'Is English law Christian?', in Nick Spencer ed. *Religion and Law*, 148.

⁵⁸ Puppink, 'Le christianisme aura-t-il sa place en Europe?', 5.

It was the Catholic Church which was most vociferous in its opposition to these changes. Concern about abortion was, however, primarily a Catholic issue at that stage. It was only in the late 1970s when Francis Schaeffer educated Protestant Christians that abortion was an issue for all Christians and not just Catholics.⁵⁹ There is now widespread discomfort amongst Christians on at least three aspects of English abortion law: the letter of the law is not enforced,⁶⁰ the provisions allow for the late termination of babies which are disabled, and the time limit for abortions is much longer than in other European countries. Nonetheless, Christian opposition to legalised abortion is not universal, with some still holding that mass legalised abortion is preferable to the dangers to mothers of unregulated back-street abortion.

There is greater unanimity amongst Christians behind Cardinal Hume's opposition to the 1984 Warnock Inquiry which, by a majority of one vote, recommended that experimentation on human embryos up to 14 days old be permitted. The 1990 Human Fertilisation and Embryology Act legalised experimentation on human embryos of up to 14 days development for the purposes of research into infertility, congenital disease, causes of miscarriages, contraception and detecting gene or chromosome abnormalities. Hume condemned this, arguing that 'innocent life is to be protected by the criminal law and public policy; no law should countenance discrimination by the strong against the weak'. He commented that legislation such as this meant that Britain no longer had the right to call itself a *Christian country*.

English Christians of all kinds appear broadly content with the current law relating to euthanasia and assisted suicide. Here the law offers a bright-line defence of the vulnerable which is significantly nuanced by the practice of leaving the courts to show compassion in individual cases. What is feared by many is that the idea of human rights will once again be distorted, and that the denial of a right to life to an unborn child will be paralleled by the proclamation of a right to death for the

⁵⁹ Schaeffer's position was set out in *A Christian Manifesto* (Wheaton, IL: Crossway, 1981).

⁶⁰ Jill Kirby, 'Our abortion law is being undermined', available on-line at <http://www.telegraph.co.uk/news/uknews/9846254/Our-abortion-law-is-being-undermined.html>

old and the terminally ill.

Sexual Morality

The current point of most acute tension between Christians and English law relates to questions of sexual morality. The issues arise here at two levels. At one level, there is far from being a consensus among Christians about questions of heterosexual sex outside marriage, homosexual sex and the institutions of civil partnership and gay marriage. It is probably true to say that whilst the historic teaching of the Christian churches is unequivocal, every section of the Church today is divided on these questions.

At a deeper level, there is the issue of what the clash between English law's new stance on these questions says about the place of religion and conscience in England going forwards. Thomas More was a hero of Richard O'Sullivan's because 'Thomas More died for the right of individual conscience as against the state; for the belief that there is an ultimate standard of right and wrong beyond what the state may at any moment command.'⁶¹ Conversionists, separatists and principled pluralists worry that the decisions taken by Islington LBC in respect of Ms Ladele and by Relate in the case of Mr McFarlane indicate the imposition of a new public morality which overrides the conscientious objections of Christians.⁶² Even if the right of the Churches to determine their own moral teaching is being formally respected, in practice the space in which Christians are able to live in accordance with that moral teaching is in danger of becoming vanishingly small.

A Loss of the Sense of the Limits of Law

The combination of an understanding of government as the primary dispenser of welfare, of people as individuals whose choices should be facilitated and subsidised by government so far as is possible, and of human rights as the means by which individuals assert themselves against others leads to a vision of society in which the primary if not

⁶¹ R.W. Chambers, *Thomas More*, (London: Cape, 1935), 368.

⁶² See the decision of the Fourth Section of the European Court of Human Rights in *Eweida and Others v UK* (application nos. 48420/10, 59842/10, 51671/10 and 3656/10). Note: See also the article on these decisions by Frank Cranmer elsewhere in this issue – Ed.

the only actors are the individual and the state.

Built into the structure of Christianity's grand narrative about God's economy is a double affirmation: an affirmation that there are limits to what law can achieve and an affirmation that there are limits to the legitimate powers of governments. The conversionist, the separatist and the principled pluralist all argue that the Church has a key role in reminding the state that there are limits to its powers and to its remit.

The twentieth century saw two political systems which admitted that their goal was the total control of society. One was Nazism. The Nazi sociologist Arnold Bergstraesser identified one of the aims of Nazism as being to establish 'a real unity between State and society' in which the existence of no sphere apart from the State would be allowed. The other was communism which asserted total control over the economy. It is no accident that both of those systems persecuted the Church.

There are occasional hints that the British political establishment is losing sight of the fact that there are limits on its powers. An obvious example for some Christians would be the re-definition of marriage. Another, perhaps more subtle indicator, was the announcement by the Coalition Government that they intended to cap the amount of tax relief which was available on charitable donations. The dangerous assumption behind that proposal was that all property belongs to the state and that there are no limits on how much of that property government can demand. The government appeared to object to the idea that wealthy individuals should be able to decide the good causes to which their money should go rather than handing it over to the government in the form of taxes for the government to dole out. Thinking like that, whether from the left or from the right of politics, is the thinking of a government which thinks it controls or should control society.

Under the influence of John of Salisbury and Thomas Aquinas, and through the martyrdom of Thomas Becket, the Church in England, both before and after the Reformation, witnessed to the truth that governments are there to serve society, not to control society. Therefore, the size and scope of government should be limited and the extent of human law itself needs to be controlled. As Julian Rivers

explains: ‘The idea that law is limited lies at the heart of the Christian gospel: we are saved by grace, not by law, and if adherence to the moral law is powerless to restore us to relationship with God, still less is any possible civil law.’⁶³ The role of human law in combating sin is therefore limited, and because of the tendency for power to be abused by the sinful people who hold it, the extent of human law itself needs to be controlled.

O’Donovan’s proposal is that the role of government is limited to taking action when wrong would otherwise occur (“the wrong principle”). The wrong principle is capable of justifying significant interventions on the part of government, for example the bail-outs of RBS, HBOS and Northern Rock. Applied strictly, however, it calls into question many of the activities in which the Westminster government and bureaucracy engage. Principled pluralism and Catholic social teaching would allow for a more active involvement of government in defining and pursuing the common good, but would nonetheless raise concerns about the domination of the State in Britain today.

Conclusion

There are two myths about Christianity’s relationship to English law of which Christians should beware. One is that Christianity and nothing but Christianity influenced the historical development of English law, the other that Christianity has no continuing influence on English law today.

There remains much in English law for which Christians in England should be thankful. The integrity of the English legal system, the stability of the public order which it polices, the legislation outlawing race, sex and disability discrimination, the commitment to the rule of law, the involvement of juries in the process of the criminal law.

There are areas where disquiet is justified and widespread: the speed of change and direction of travel of English criminal law, the potential exclusion of many from access to civil justice, and the dominance of the State in terms of welfare provision.

⁶³ Rivers, ‘Liberal Constitutionalism and Christian Political Thought’, in P. Beaumont ed., *Christian Perspectives on the Limits of the Law* (Carlisle: Paternoster, 2002), 11.

On other questions, it would be presumptuous to venture an assessment on behalf of English Christianity as a whole. Family law appears unsatisfactory but no credible joined-up alternative has yet been presented. Christian responses to human rights divide between those who see a largely shared agenda and those for whom particular objectionable outcomes reveal that human rights theory is rotten to the core. On life issues and sexual morality there are those Christians who seek to move with the tide and those who refuse to depart from historic understandings of the Bible and of the teachings of the Church.

I have pondered what O'Sullivan would have said were he alive and writing today. I think he would still have pointed to the way in which English law historically affirmed the ideal of the free and reasonable man, the limits on the power of government as subject to the laws of reason and nature, and the way in which English law gave each family a degree of independence and security. It seems to me that the principal danger at the present time is that a government, which does not recognise that its powers are limited and that it exists to promote a common good which does not define, blunders into legislating its citizens into an insecure dependence on the state which deprives them of their freedom and dictates to them what is to be regarded as reasonable.

The situation of Christianity in England today is still some considerable distance from producing new martyrs who are prepared to die in the name of conscience and of allegiance to Christ. Whether such a dramatic witness will be required depends on whether English law continues to recognise its limits, to manifest a concern for the poor and the weak, to offer justice to all, to foster civil society and not work against it, and to create a space for the expression of faith and conscience.