

THE LEGAL ENFORCEMENT OF MORALITY IN LATE-VICTORIAN AND EDWARDIAN ENGLAND¹

by
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In his book *The Legal Philosophy of H.L.A. Hart*, Michael Martin asserts that after the debate between John Stuart Mill and James Fitzjames Stephen in mid-Victorian times, the controversy over the legal enforcement of morality remained 'dormant' in England until the publication of the Wolfenden Report on Homosexual Offences and Prostitution in 1957.² Martin's assertion misleads. The publication of Mill's essay *On Liberty* in 1859 and Stephen's book *Liberty, Equality and Fraternity* in 1873 set the scene in the late-Victorian and Edwardian years for a vigorous, is not volcanic, social and political debate on the role of the law in regulating individual behaviour.³ In this article I will examine some of the arguments used by protagonists for and against the enforcement of a common morality by law between 1870 and 1914. First I will consider the context in which these arguments were presented.

Morality mattered to the Victorians. They had a 'penchant for moral rhetoric' and tended 'to analyse their society, to attack each other, and defend their various interests in moral terms'.⁴ Many agreed that a common morality was necessary to hold society together but they differed violently over how best to preserve or perpetuate this common morality and whether individuals should be allowed to deviate from it. Throughout the nineteenth century preoccupation with the moral welfare of the nation became more acute during times of economic and social crisis. This was the case in the 1830s and 1840s when the 'condition of England' question was prominent. A feeling of crisis similarly characterised the period 1870 to 1914 for three reasons: Britain's national power and industrial supremacy was challenged by increasingly powerful international competitors; working-class attendance at church further declined, indicating a disturbing indifference to Christian

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1 This article provides an overview of the author's forthcoming book entitled *Policing morals: the Metropolitan Police and the Home Office 1870-1914*, Oxford, Clarendon Press, 1992. Evidence to support the points made in this article can be found there.

2 M. Martin, *The Legal Philosophy of H.L.A. Hart*, Philadelphia, Temple University Press, 1987, 240; for the most thorough modern discussion on the legal regulation of individual morality see J. Feinberg, *The moral limits of the criminal law*, 4 vols. New York, Oxford University Press, 1984-1988.

3 The connection between law and morality also 'filled the pages of professional law journals' and attracted the attention of leading jurists, see R.A. Cosgrove, 'The reception of analytic jurisprudence: the Victorian debate on the separation of law and morality, 1860-1900', *Durham University Journal*, vol.74, 1981-82, 49, 51.

precepts; and social investigators, notably Charles Booth, produced undeniable evidence of widespread urban poverty.⁵ Searching for the causes of industrial decline, religious insouciance, and poverty, moral reformers tended to blame excessive indulgence in drink, vice, and crime by the thirty per cent of the population at the bottom of the social scale, living in the growing late nineteenth-century cities, especially London.⁶ Moralists warned that persistent indulgence in immorality threatened to destroy institutions, such as family and work, and shared values, such as honesty, decency, self-discipline, respect for the property and person of others, and diligence, upon which social stability and the future of the nation supposedly depended. A clear illustration of the concerns of moral reformers was given by Major Seton Churchill in 1894. With reference to gambling, he wrote:

A grave national evil surrounds us, for gambling produces godlessness and irreligion, induces dishonesty, deadens the moral sense, unfits men for the sterner duties of life, creates feverish excitement in the place of steady work and industry, lowers self-respect, degrades manhood, develops low cunning and selfishness, destroys domestic happiness and home life, unsettles the labour market and the working-classes, and encourages crime and general recklessness. A moral disease with such disastrous consequences is surely one that every right-minded Englishman should strive to stamp out, or it will soon destroy all the noblest, purest and brightest characteristics of our nation.⁷

The nation which possessed 'the largest number of hard-working painstaking people and the fewest gamblers must sooner or later assert its superiority'. British workers were 'greater slaves to drink and gambling than their compeers in other countries'. Therefore, it seemed to Churchill that 'this grand empire of ours is swinging in a balance'. It had risen to become 'mistress of the seas' and 'the queen of commerce' but he saw signs of 'decay at every hand'. These kinds of apocalyptic pronouncements were typical of moral reformers but their claims were highly contestable: they could not prove that morals had changed (no exact or reliable statistics existed on the past or present level of prostitution, drunkenness, and gambling) or that there was any direct causal connection with social and economic problems.

To treat this decay moral reformers prescribed strong doses of state intervention. Durkheim once described the state as 'supremely the organ of

4 P. Marsh (ed), *The conscience of the Victorian State*, Hassocks, Harvester Press, 1979, 3.S. Collini, *Public moralists: political thought and intellectual life in Britain 1850-1930*, Oxford:Clarendon Press, 1991, esp ch. 7.

5 G.R. Searle, *The Quest for National Efficiency*, Oxford, Basil Blackwell, 1971, Ch.1; K.S Inglis, *Churches and the working classes in Victorian England*, London, Routledge and Kegan Paul, 1963; H .McLeod, *Class and religion in the late Victorian city*, London, Croom Helm, 1974; E.P. Hennock, 'The measurement of urban poverty', 1987, *Economic History Review*, vol.40, 208-27.

6 T. Croskerry, 'Drunkenness, abstinence and restraint', *Edinburgh Review*, vol.137, 1873, 400-402, 414, 421; F.W. Farrar, 'Social problems and remedies', *Fortnightly Review*, vol.43 n.s., 1888, 350-63; S. Churchill, *Betting and gambling*, London, James Nisbet, 1894, 82.

7 Churchill, *Betting*, 45, 76, 83-5.

moral discipline'.⁸ From the 1870s a growing convergence of opinion on the social necessity of a strong state emerged in England and, many contemporaries argued, individual rights were increasingly liable to be subordinated to the rights of the state (by which was usually meant the government, the bureaucracy, and the police).⁹ The main instrument used by the state was the law in general, and the criminal law in particular, to regulate, marginalise, or sometimes suppress social behaviour of various kinds which seemed to threaten order and morality: more and more people were brought under 'the rigid domination of the Law'.¹⁰ The use of the law by the state to establish collective norms and rules of behaviour, by educating some citizens and coercing others, was highlighted by a number of contemporary and later social and legal theorists.¹¹ In 1896, for example, Frederick Pollock, Professor of Jurisprudence at Oxford, noted in his standard textbook that the 'rule of law' could have 'an effective influence in maintaining, reinforcing, and, even elevating the standard of current morality'.¹²

After 1870 the use of the criminal law became more precisely focused as 'new categories and new social identities were produced in opposition to the generalised notions of poverty and pauperism'.¹³ These categories embraced 'the idea of "relative" degrees of criminality, with a *continuum* running between the criminal and non-criminal, the normal and the pathological'.¹⁴ Such categories included the unemployed and the habitual vagrant; the juvenile delinquent and the hooligan; the first offender and the habitual criminal; the casual and the professional prostitute; the occasional drunk and the habitual drunkard. Ultimately, a moral distinction was made between those who could be enlisted, despite temporary aberrations, into the ranks of the respectable and those irredeemably lost to vice, pauperism, drunkenness, and immorality; those who could be incorporated into the

8 E. Durkheim, *Professional Ethics and Civic Morals*, London, Routledge and Kegan Paul, 1957, 72 (First publ. 1904) quoted in P. Corrigan and D. Sayer, *The great arch: English state formation as cultural revolution*, Oxford, Basil Blackwell, 1985, 5.

9 Contemporaries were divided over what the state was. E.F.B. Fell, (*The Foundations of Liberty*, London, Methuen, 1908, 45) regarded the state as 'the political nation viewed as organised and armed for governmental purposes' but W.D. McKechnie, (*The state and the individual*, Glasgow, J. MacLehose and Sons, 1896, 49-50) thought the state was 'something considerably more than the government, even when the latter is stretched to its widest extent so as to include the legislative, executive, and judicial authorities'. W.R. Anson, *The law and custom of the constitution*, 4th ed., Oxford, Clarendon Press, 1909, vol.1, 14-15 noted that the state was of 'complex construction' and that there was 'some uncertainty' as to its meaning.

10 V.A.C. Gatrell, 'The decline of theft and violence in Victorian and Edwardian England' in V.A.C. Gatrell, B. Lenman and G. Parker (eds), *Crime and the law*, London, Europa, 1980, 254-9; E. Carpenter, *Prisons, police and punishment*, London, Fifeild, 1905, 113.

11 For a convenient summary of modern writers see S. Hall and P. Scraton, 'Law, class, and control' in M. Fitzgerald, G. McLennan and J. Pawson (comps.), *Crime and society: readings in history and theory*, London, Routledge and Kegan Paul, 1981, 460-497.

12 F. Pollock, *A first book of jurisprudence: for students of the common law*, London, Macmillan, 1896, 45-8.

13 S. Hall and B. Schwartz, 'State and society, 1880-1930' in M. Langan and B. Schwartz (eds), *Crises in the British state 1880-1930*, London, Hutchinson, 1985, 19.

14 D. Garland, *Punishment and welfare*, Aldershot, Gower, 1985, 184.

social order, with their liberty restored, and those who could not, or who obstinately refused to become incorporated and merited discipline.

We can point to two important indications of the increasing use of the criminal law. One was the emergence of the criminal department of the Home Office. Upgraded from a branch to a department in 1870, by 1906 it handled a third of the Home Office work and was the most important department.¹⁵ The other indication was the growing duties imposed on the Metropolitan Police. In 1829 when the Metropolitan Police, under Home Office control, was formed their duties were encompassed in seven statutes.¹⁶ By 1908, claimed the Royal Commission on the Metropolitan Police, that these duties, specified in over 600 statutes, were 'so extensive and the powers granted so great' that they limited 'in almost every direction the freedom of action of every Londoner'.¹⁷ The police, 'originally created solely to maintain order', had become, lamented two journalists, 'in a large measure censors of morality'.¹⁸

Why did the central state increasingly use the criminal law to regulate individual morality after 1870? We can point to three related reasons - changes within political parties, especially the Liberal Party; the involvement in politics of Nonconformists; and the agitation of pressure groups.

One of the most interesting developments in late nineteenth-century politics was a change in the attitude of the Liberal Party to state intervention. The Liberal Party, traditionally, had been an opponent of state interference with individual freedom: it placed individual rights above those of the community.¹⁹ The changed economic and social circumstances of the late nineteenth-century caused a reinterpretation of Liberal principles. The so-called New Liberalism, increasing in influence from the 1890s, stressed the moral function of the state and held that positive state action could be an instrument for furthering, not inhibiting, individual freedom.²⁰ L.T. Hobhouse, a leading New Liberal theorist, demanded 'the freedom of all citizens capable of rational self-direction from removable socially created economic obstacles to develop certain features of their personality in a

15 J. Pellew, *The Home Office 1848-1914*, London, Heinemann, 1982, 22, 57, 76.

16 'Custos', *The police force of the metropolis in 1868*, London, William Ridgway, 1868, 8.

17 PP 1908/50, Royal Commission on the Metropolitan Police, 51; W.F.A. Archibald, *The Metropolitan Police Guide*, 5th edn., London, Stationery Office?, 1911, ix-xxvii, listed some 643 statutes related to Metropolitan Police work.

18 R. Nevill and C.W. Jerningham, *Piccadilly to Pall Mall*, London, Duckworth, 1908, 150; on the establishment of the police see A Silver, 'The demand for order in civil society: a review of some themes in the history of urban crime, police and riot' in D Bordua (ed), *The police: six sociological essays*, New York, Wiley, 1967, 1-24.

19 H. Spencer, *The man versus the state*, Harmondsworth, Penguin, 1969, 65-7, 81; S. Collini, *Liberalism and sociology: L.T. Hobhouse and political argument in England 1880-1914*, Cambridge, Cambridge University Press, 1979, 70, 122-4.

20 Collini, *Liberalism and sociology*, 107-9; M. Freeden, *The New Liberalism*, Oxford, Clarendon Press, 1978, 254-8; P. Clarke, *Liberals and Social Democrats*, Cambridge, Cambridge University Press, 1981, 184.

morally desirable and socially harmonious direction'.²¹ The New Liberal state would recognise 'the moral standing' and rights of all citizens working for the common good and would meet their social and economic needs. But New Liberalism had a punitive side. Those who refused to fulfil their 'social functions' - variously called the 'unemployable', 'the residuum', or 'the morally uncontrolled' - were appropriate subjects for 'discipline and restraint'.²²

Other currents of thought within the Liberal Party were even more illiberal. One current derived from the Liberal Imperialists, who stressed the need to improve the racial stock to achieve national efficiency and enhance Britain's economic competitiveness.²³ This aim was supported by the Fabians, who placed great reliance on an expert bureaucracy to run society.²⁴ Liberal Imperialists and Fabians favoured eugenic solutions to social problems involving the 'selective breeding out of the socially unfit' and compulsory sterilisation but they failed to translate these odious desires into law before 1914.²⁵ The other new political grouping, the Labour Party, regarded eugenics as anathema but, heavily influenced by New Liberal ideas, accepted that state intervention was needed to improve working-class life and morality: they formed a progressive alliance in Parliament.²⁶ Labour politicians wanted to purge working-class life of drinking and gambling in order to deliver workers from destitution and to equip them for political power. But many Labour leaders were also moved by puritanical inclinations. John Burns, for example, equated puritanism with national survival: when 'the Puritan spirit disappears from England', the English will be 'numbered among the people of the past'.²⁷

Another relevant feature of late-Victorian politics was 'the more favourable estimate of state action for moral purposes' adopted by Nonconformists.²⁸ With their religious liberties assured, many Nonconformists reversed their previous distrust of the state and argued that legislation could largely eliminate social evils - prostitution, drunkenness, and gambling - upon which decades of voluntary philanthropic work had little impact. A prominent Nonconformist, the Rev. Hugh Price Hughes, believed that the 'real character of every nation' was 'determined by the character of its

21 Collini, *Liberalism and sociology*, 124 (emphasis in original), 126-7.

22 *ibid.*, 139.

23 H.C.G. Matthew, *The Liberal Imperialists*, Oxford, Oxford University Press, 1973, 224-7.

24 R. Barker, 'The Fabian state' in B. Pimlott (ed), *Fabian essays in socialist thought*, London, Heinemann, 1984, 27-38.

25 G.R. Searle, *Eugenics and politics in Britain 1900-1914*, Leyden, Noordhoff International Pub., 1976.

26 P.F. Clarke, 'The Progressive Movement in England', *Transactions of the Royal Historical Society*, 5th series, vol.24, 1974, 159-81.

27 K.D. Brown, *John Burns*, London, Royal Historical Society, 1977, 197; see also R. MacDonald, 'A plea for puritanism', *Socialist Review*, vol. 8, 1911-12, 422-30.

28 D. Bebbington, *The Nonconformist conscience*, London, George Allen and Unwin, 1982, 13-14.

laws'.²⁹ The law was 'the national conscience' and 'immeasurably influenced' national morality by force and by 'educational' means. The liquor licensing laws and the Contagious Diseases Acts regulating prostitution, however, showed that the law could further immorality. Crusaders advancing 'great moral enterprises' by strengthening moral laws were 'sober and wise patriots', seeking to unleash human potential from the chains of immorality. In even more flowery language the classical scholar and controversialist F.W. Newman wrote that 'By going to the root of evil, Law touches the springs of conduct and becomes a moral healer and teacher; by being moral it is sacred'.³⁰ If the 'social influence' of the churches was weakening due to declining attendances, the law could reinforce the messages of the pulpit and powerfully inculcate Christian values.

Nonconformists held influential positions in both the Liberal and Labour parties and were leading lights in various middle-class pressure groups crusading against vice and drunkenness. Exploiting the widening of the franchise by the Reform Acts of 1867 and 1884, pressure groups, often skilfully using the press to highlight evils, were successful in lobbying governments and securing the enactment of new criminal laws. Moral reformers tended to agree with W.E. Gladstone that 'Government ought to make it easy to do right and difficult to do wrong' and with the Oxford Idealist philosopher T.H.Green that the state should 'maintain conditions of life in which morality shall be possible'.³¹ They rejected the view that men 'cannot be made moral by Act of Parliament', arguing that the law could remove 'every obstacle and hindrance in the path of moral progress', could restrain 'every means of temptation and inducement to wrong-doing', and could encourage 'sobriety, righteousness, and purity'.³² Although immoral habits amongst the upper and middle classes did not go unnoticed, the main concern of pressure groups was with 'the moral progress and improvement of the working class'.³³ Their moral welfare was essential to national survival.

Before looking more closely at the motives of specific pressure groups, a few general points need emphasis. First, members of these pressure groups did not necessarily abandon, or disparage the value of, philanthropy.³⁴ But philanthropy depended on the voluntary decision of individuals to change their behaviour. Impatient for a more immediate solution to moral evils, pressure groups increasingly wanted to shape society in their own image by urging the state to legislate against what they saw as threats to the social order, and to force all citizens to adhere to their

29 H.P. Hughes, *Social Christianity*, London, Hodder and Stoughton, 1890, 139-41.

30 F.W. Newman, 'Parliamentary government', *Fortnightly Review*, vol. 15 n.s., 1874, 338-9.

31 B. Harrison, *Peaceable Kingdom*, Oxford, Clarendon Press, 1982, 400; M. Richter, *the politics of conscience: T.H. Green and his age*, London, Weidenfeld and Nicholson, 1964, 283-91.

32 J. Crompton, 'Can men be made moral by Act of Parliament?', *Primitive Methodist Quarterly Review*, vol.15, 1893, 54-5, 59.

33 H.A. White, 'Moral and merry England', *Fortnightly Review*, vol. 38 n.s., 1885, 775-7.

34 G. Stedman Jones, *Outcast London*, Harmondsworth, Penguin, 1984, part 3; Harrison, *Peaceable Kingdom*, 217-59.

conception of morality. Second, although for tactical reasons and to win political support, some moral reformers used arguments underlining Mill's famous harm to others principle, they felt that prostitution, drunkenness, and gambling were immoral in themselves and demanded their eradication irrespective of their impact on others.³⁵ Third, the legislation, whether it succeeded in its aims or not, provided symbolic satisfaction and comfort for moral reformers because it publicly affirmed and legitimated their view of right and wrong behaviour: what the law did not condemn, by implication it condoned.³⁶ Finally, while membership of the pressure groups rarely overlapped, moral reformers were largely drawn from the professional middle class and the lower middle class, who began to assert themselves in the social structure.³⁷

Three pressure groups deserve attention. One was the National Vigilance Association formed in August 1885 during the vivid 'Maiden Tribute' revelations of female child prostitution published by W.T. Stead's *Pall Mall Gazette*.³⁸ Espousing 'a moral militancy', the National Vigilance Association led the late-Victorian and Edwardian crusade to suppress 'criminal vice and public immorality' and was responsible for the enactment of the Criminal Law Amendment Acts of 1885 and 1912 against prostitution, procuration, and white slavery and the Vagrancy Act Amendment Act 1898 against pimps, those 'enemies of society' who 'lived by the disgraceful earnings of the women whom they consorted with and controlled'.³⁹ Critics of the National Vigilance Association grudgingly conceded that this legislation had repressed 'all outward manifestations of vice' but rightly argued that vice simply assumed more clandestine and 'insidious forms'.⁴⁰

The Secretary of the National Vigilance Association was William Coote, a compositor and labour leader. A fine example of 'a working-class radical puritan' who claimed to have been inspired by a vision from God, Coote fervently proclaimed the effectiveness of the law in regulating social behaviour.⁴¹ The law, he enthused in 1902, was 'school master to the whole community, preventing wrong by whipping most of the citizens into a condition of obedience'. The English people 'are what they are, because to be otherwise would be followed by pains and penalties of a serious and

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- 35 W.E.H. Lecky, *Democracy and liberty*, London, Longmans, Green, 1896, vol.2, 106.
- 36 Generally see J. Gusfield, 'Moral passage: the symbolic process in public designations of deviance' in C.A. Bersani (ed), *Crime and delinquency*, London, Macmillan, 1970, 64-77.
- 37 H. Perkin, *The rise of professional society: England since 1880*, London, Routledge, 1990; G. Crossick (ed), *The lower middle class in Britain 1870-1914*, London, Croom Helm, 1977.
- 38 E.J. Bristow, *Vice and vigilance*, Dublin, Gill and Macmillan, 1977, chs. 5 to 9.
- 39 W.A. Coote (ed), *A romance in philanthropy*, London, National Vigilance Association, 1916, ix, 14, 168; *Hansard's Parliamentary Debates*, 4th series, vol.54, 14 March 1898, 1538.
- 40 Nevill and Jerningham, *Piccadilly to Pall Mall*, 131-2, 137.
- 41 Bristow, *Vice*, 87; W.A. Coote, 'Law and morality' in J. Marchant (ed), *Public morals*, London, Morgan and Scott, 1902, 43-74.

unpleasant character'. He attacked the 'very popular cant-phrase that you cannot make men good or sober by Act of Parliament', by asserting that:

You can, and do keep men sober simply by Act of Parliament; you can, and do, chain the devil of impurity in a large number of men and women by fear of law ... While human nature is so weak and yet capable of so much wrong-doing, we must by every means in our power, by the administration of just and equal laws, do all we can to enslave vice and give the utmost liberty and freedom to all that is pure and good.

Not all National Vigilance Association members or moral reformers were as extreme or as coercive as Coote but they all believed that their conception of morality should be embodied in law.

The ire of moral reformers was also raised by the alleged prevalence of working-class drunkenness. The United Kingdom Alliance, formed in 1853, advocated 'the prohibition by law of the sale and production of intoxicating liquor'.⁴² Wilfred Lawson, vocal representative of the United Kingdom Alliance in Parliament, wanted 'the power of Law' to be 'directed, not to the defence, entrenchment and, maintenance' of the liquor trade, not to making it 'more outwardly respectable', but to 'legislating it out of existence'.⁴³ From the 1870s Lawson and his colleagues presented bills to Parliament with obsessive monotony but with mixed success. They did not achieve their aim of prohibition but the Licensing Acts 1872, 1874, and 1902 tightened restrictions on the sale of liquor in pubs and clubs and punished sellers who encouraged drunkenness. This legislation did much 'to prevent drunkenness and preserve order' and ensured that most pubs were conducted with care.⁴⁴

The United Kingdom Alliance, Lawson remarked, was 'more anxious to punish the drunkard-maker than the drunkard' but the drunkard did not escape the gaze of moral reformers.⁴⁵ The Society for the Study of Inebriety, formed in 1887 and backed by the British Medical Association, advocated punitive measures for habitual drunkards.⁴⁶ This body was largely responsible for the Inebriates Act 1898, which branded criminal inebriates with three or more convictions as irreclaimable. After serving a sentence for a drunkenness-related offence, these inebriates were liable for compulsory incarceration in a state inebriate reformatory.⁴⁷ Similar efforts to impose compulsory incarceration on non-criminal inebriates were defeated. But by section six of the Licensing Act 1902 black lists of habitual

42 D.A. Hamer, *The politics of electoral pressure*, Hassocks, Harvester Press, 1977, 165, chs. IX to XIII; A.E. Dingle, *The campaign for prohibition in Victorian England*, London, Croom Helm, 1980.

43 W. Lawson, *Law and the liquor traffic*, London, Lees and Raper Memorial Trustees, 1905, 8, 11.

44 A. Shadwell, *Drink, temperance and legislation*, London, Longmans Green, 1902, 49, 201; F.M.L. Thompson, *The rise of respectable society*, London, Fontana, 1988, 328-30.

45 *Hansard's Parliamentary Debates*, 3rd series, vol.218, 27 April 1874, 1251.

46 Anon., 'The foundation of the Society for the Study of Inebriety', *British Journal of Inebriety*, vol. 1, 1903, 1-2.

drunkards were circulated to publicans and club owners. Publicans found supplying alcohol to a black listed inebriate would be fined: the inebriate would receive a heavier fine and could be detained in a reformatory. In practice a very small proportion of inebriates entered reformatories and the Prison Commissioners admitted that the Inebriates Act 1898 had failed 'to deal with the problem of habitual alcoholism'.⁴⁸

Our last pressure group was the National Anti-Gambling League, formed in 1890 to seek stronger laws against gambling of all kinds.⁴⁹ Its Secretary was John Hawke, a manager in an exporting business with literary proclivities. Unlike Coote, Hawke emphatically denied support for 'any general repressive statute'.⁵⁰ The National Anti-Gambling League would 'keep wholly upon the *educational* tack with the individual - example, persuasion, warning, entreaty - but no force'. It would, however, 'call upon the strong arm of the law to stretch its utmost length to punish *mercenary temptations and inducements to vice*', when offered by bookmakers or newspapers. It intended to make 'all kinds of gambling difficult, dangerous, and disreputable, and as unfashionable as drunkenness'.⁵¹ This aim was pursued on two fronts. One way was by initiating court cases. The other, through supporters from all parties in both the Commons and the Lords, was by urging legislative reform. The National Anti-Gambling League had varying degrees of success in restricting gambling at racecourses, in pubs and clubs, by post and in newspapers. Its main focus was on street betting - the preserve of the working class - where bookmakers regularly stationed themselves on a certain spot on a street and took bets from residents of the local neighbourhood. The anti-gamblers crowning achievement was the Street Betting Act 1906, which was solely concerned with working-class gambling. It made street betting an offence and introduced a graduated scale of punishments with a fifty pound fine or six months hard labour for a third conviction. In the short term arrests for street betting increased but street bookmakers took various precautions and by at least August 1909 police admitted that the Street Betting Act was virtually unenforceable.⁵²

To achieve their aims it was essential for pressure groups to win the support of the Home Office, which was involved in framing legislation and interpreting and administering statutes, and the Metropolitan Police, which enforced the legislation.⁵³ The support of the Home Office and the Metropolitan Police could not always be relied upon. The Home Office undoubtedly had an entrenched conservative commitment to preserving the

47 L. Radzinowicz and R. Hood, *A history of English criminal law and its administration from 1750*, London, Stevens and Sons, 1986, vol.5, ch.9.

48 PP 1916/15, Annual report of the Prison Commissioners 1915-16, 10.

49 D. Dixon, *From prohibition to regulation*, Clarendon Press, Oxford, 1991.

50 J. Hawke, 'Our principles and programme', *New Review*, vol.10, 1894, 705-17 (emphasis in original).

51 *Bulletin of the National Anti-Gambling League*, vol.4, Feb. 1911, 99.

52 *Police Review and Parade Gossip*, 13 Aug. 1909, 391.

53 S. McConville, 'Legislators, judges and jurors: bureaucratic processes and law in late Victorian England', *Law in Context*, vol.7, 1989, 1-29.

social order and many officials generally shared the concerns of moral reformers.⁵⁴ But, as C.F.G. Masterman, parliamentary under-secretary from 1909 to 1912, noted, the Home Office was guided by certain principles when considering restrictive legislation.⁵⁵ These principles were (1) 'Do not, unless forced to do so, make crimes out of things which are not crimes already'; (2) 'Do not introduce proscriptive legislation beyond the standard of conduct which will be accepted by the general feeling of the country'; (3) 'Do not throw upon the police a burden greater than they can bear'.

The attitudes of the Metropolitan Police varied. Some Commissioners were enthusiastic about particular moral crusades. Edward Henry (Commissioner from 1903 to 1918) was 'fully in sympathy' with the aims of the National Anti-Gambling League, while Charles Warren (Commissioner from 1886 to 1888) had a deep aversion for prostitution.⁵⁶ Assistant Commissioner in charge of detectives from 1888 to 1901 Robert Anderson was particularly enthusiastic. Anderson believed in 'statutory morality' - that, without the restraint of the law, most men had no 'incentive to virtue' and nothing to hold them 'back from vice'.⁵⁷ It was 'one of the most certain truths in practical ethics' that men '*can* be made moral' by laws. But generally, whatever their personal views, senior police showed sensitivity to the public mood and, as one claimed in 1913, the police dreaded 'the passage of laws making a crime of actions which a great many people regarded as innocent' and which were difficult to enforce.⁵⁸ Thus, not all laws were remorselessly enforced, as was the case with fairs and Sunday trading.⁵⁹ Discretion also prevailed at the neighbourhood or street level, where police in the lower ranks 'negotiated a complex, shifting, largely unspoken "contract"'. They defined the activities they would turn a blind eye to, and those they would suppress, harass or control'.⁶⁰ Thus, discretion enabled these police to strike an operational balance between, on the one hand, the demands of the law, their superiors, and moral reformers and, on the other hand, the often different attitudes of the residents in the local areas they policed, and their own views and backgrounds. As Superintendent Neylan of Chelsea Division remarked, 'the standard of what is permissible must differ to

54 Pellew, *Home Office*, 5, 89-91.

55 L. Masterman, *C.F.G. Masterman*, London, Frank Cass, 1939, 135.

56 Dixon, *From prohibition*, 131 n. 97; B. Porter, *The origins of the vigilant state*, London, Weidenfeld and Nicholson, 1987, 81.

57 R. Anderson, 'Morality by Act of Parliament', *Contemporary Review*, vol.59, 1891, 78-9, emphasis in original.

58 R.B. Fosdick, *European police systems*, New Jersey, Paterson Smith, 1969, 381. (First publ. New York: The Century Co., 1915).

59 H. Cunningham, 'The metropolitan fairs: a case study in the social control of leisure' in A.P. Donajgrodzki (ed), *Social control in nineteenth century Britain*, London, Croom Helm, 1977, 163-84; W.R. Miller, 'Never on a Sunday: moralistic reformers and police in London and New York city, 1830-1870' in D. Bayley (ed), *Police and society*, London, Sage, 1977, 127-48.

60 M. Ignatieff, 'Police and people: the birth of Mr Peel's "blue locusts"', *New Society*, 30 Aug. 1979, 445.

some extent with the district' and police would not arrest without good reason.⁶¹

A compelling justification for not supporting the demands of moral reformers was that the regulation of vice was morally dangerous for lowly paid police, who were susceptible to bribery. One Scotland Yard official candidly admitted in 1913 that 'We cannot guarantee the integrity of the police against the vicious influences arising from unenforceable laws'.⁶² The evidence strongly indicates that payment to police from the rank of inspector down by brothel-keepers, publicans, club owners, and street bookmakers was fairly prevalent in the late-nineteenth and early twentieth centuries. Moreover, to stop immorality, police often used methods that approached the illegal. Some methods, Anderson admitted, were 'extra-legal' or, less euphemistically, 'utterly unlawful' - violating privacy, spying, and resorting to artifice or entrapment raised important moral issues.⁶³ For instance, if a detective perverted the law in an effort to entrap a criminal, did it destroy the difference between himself and the criminal?

In sum we can say that Home Office bureaucrats and Metropolitan Police Commissioners resisted the extreme demands of moral reformers. A policy of prohibition, even in the unlikely event of its winning public or political acceptance, was never regarded as a realistic objective by the state.⁶⁴ It would only drive immoralities underground and make them harder to detect. Metropolitan Police Commissioners preferred a system of licensing or registration, so that the rights and duties of the police and the policed were as clearly stated as possible. Liquor licensing, for example, allowed police to purge the trade of undesirable elements and helped reduce drunkenness and police corruption. However, licensing of prostitutes and bookmakers was opposed by moral reformers because it meant state recognition of immorality and by governments, unwilling to establish new vested interests.⁶⁵ As a compromise the Home Office and the Metropolitan Police settled on the operationally practical policy of legislative regulation. The intention was to remove temptations to commit immoral behaviour by harassing the purveyors of immorality and by limiting their opportunities for contact with working-class clients, especially on main streets, which became the focus of policing. Police stressed that they were not censors of morals and directed their efforts at the crime and fraud associated with immoral activities, at protecting the public from exploitation. The upshot was that the immoral activity might be regulated but not necessarily in the way or to the extent that moral reformers envisaged. Although reacting to external demands and rarely initiating action, the agitation of pressure groups served ultimately to strengthen the powers and potential for intervention of bureaucrats and the

61 British Library of Political and Economic Science Archives, Booth Collection Group B, vol.362, undated, 251-53, vol. 356, 23 Jan.1899, 167-71.

62 Fosdick, *European police systems*, 380.

63 Porter, *The vigilant state*, 136, 7.

64 J.Brown, *Underlying principles of modern legislation*, London, J. Murray, 1912, 66, 178-94.

65 Dixon, *From prohibition*, 214-16.

Metropolitan Police. Moral problems became administrative problems, for which administrative solutions were sought.⁶⁶

To end our discussion we should consider arguments opposing the legal enforcement of morality by the central state. Middle-class moral reformers claimed to be spokesmen for society but their conception of morality or the threat to society posed by moral problems and their faith in the law to solve such problems were not shared by other members of the middle classes (those with 'interests in brewing and the entire drink trade, as well as newer ones in the entertainment industry' and socialists) or by other classes (the pleasure seeking aristocracy and working classes).⁶⁷ Indeed there emerged a body of respectable opinion, of differing political persuasions, which expressed a considered disturbance at the growth of criminal law and police power, which they regarded as a more serious threat to society than moral evils. John Stuart Mill and the social philosopher Herbert Spencer were their intellectual progenitors. Spencer was more extreme and less flexible than Mill in his defence of liberty. He upheld the values of traditional Liberalism and believed that all restraints imposed on individuals were immoral.⁶⁸ He condemned the tendency to 'over-legislation', arguing that legislation often had consequences unintended by its promoters and that no change wrought by the law could be permanent. Individuals should bear the responsibility for the consequences of their own misconduct. He warned against the increasing reliance on bureaucrats because it stifled individual initiative and self-help; each new power was a precedent for more powers and, after a certain point, bureaucratic power became 'less and less resistible'. He opposed attempts by the state to weed out or to sustain the existence of the unfit, who, unable to adapt to a changing environment, would eventually be eliminated.⁶⁹

Between 1870 and 1914 the 'instinct' for individual rights, historically characteristic of Englishmen, remained strong: they disliked 'the arbitrary action of State officials', and were 'peculiarly sensitive to anything that savours of interference by the Police with the rights and liberties of the individual'.⁷⁰ Most citizens disapproved of the state undertaking 'to guarantee' their morals by legal interference with voluntary conduct 'withdrawn from publicity and confined to private houses or associations' and where neighbours were not injured or molested.⁷¹ There was, one critic wrote, 'no more dangerous error on the part of short sighted politicians than the belief that Acts of Parliament are remedies for those immoralities which

⁶⁶ M.J. Wiener, *Reconstructing the criminal*, Cambridge, Cambridge University Press, 1990, 201.

⁶⁷ F.M.L. Thompson, 'Social control in Victorian Britain', *Economic History Review*, vol. 34, 1981, 204.

⁶⁸ Spencer, *Man versus the state*, 132, 94; McKechnie, *The State*, 249-57.

⁶⁹ D. Wiltshire, *The social and political thought of Herbert Spencer*, Oxford, Oxford University Press, 1978, 154.

⁷⁰ E. Barker, *Political thought in England from Herbert Spencer to the present day*, New York, Holt and Company, 1915, 130; McKechnie, *The state*, 275; *The Times*, 1 July 1908, 1.

⁷¹ Lecky, *Democracy and liberty*, vol.2, 139.

can only be altered by the changes of opinion and the growth of morality during a long time'.⁷²

Sceptics warned of the dangers of using the criminal law to mould behaviour from the 1870s. In 1872, during debate on liquor licensing legislation, the Bishop of Peterborough, Dr Magee, by no means anti-temperance, declared that if forced to choose between a free or a sober England, he thought it 'better that England should be free than that England should be compulsorily sober'; as 'with freedom we might ... attain sobriety; but in the other alternative we should eventually lose both freedom and sobriety'.⁷³ It was especially 'difficult' and 'dangerous for the Legislature to meddle with ... vice, or that debatable and ill-traced ground where vice may be on the verge of passing into crime'. Stringent laws would not 'promote morality' but would lead to 'a violent reaction in the direction of immorality', or, as he later wrote, 'an outburst of licentiousness'. In 1873 Samuel Blackstone painted a bleak picture:

The ideal of our Government, as revealed in their legislation, may be summed up in two words - coercion and repression. The more advanced among those who rule us dream of coercing the public into morality and health; the less advanced dream of repressing the public into order and submission.⁷⁴

Blackstone pointed out that much legislation, passed or intended, on matters like Sunday trading, vaccination, habitual drunkards, habitual criminals, liquor licensing, and prostitution was particularly oppressive to the poor because it 'must ultimately be enforced by those police authorities known to them by the bull's-eye of espionage and the truncheon of compulsion'. The use of the police had 'already reached a point extremely harassing and tyrannous towards the lowest and most defenceless members of the community, and which, if unrestricted,' Blackstone darkly predicted, 'appears destined gradually to envelop all classes in an unseen net'.

The 1870s ended with the radical Liberal Josephine Butler, prominent in the campaign to repeal the Contagious Diseases Acts, writing a defiant and persuasive anti-state critique, significantly entitled *Government by Police*. Butler attacked the tendency towards 'Police Government [which] in its worst form combines the evil of extreme centralisation with the activity, in every corner of the nation, or a vast and numerous agency of surveillance'.⁷⁵ This occurred because of 'the weakness of our people ... when anything went wrong in the country, to seek the help of the State, that false god, which

⁷² H. Crompton, *Our criminal justice*, London, T. Fisher Unwin, 1905, 23.

⁷³ *Hansard's Parliamentary Debates*, 3rd series, vol.211, 2 May 1872, 86, vol.230, 30 June 1876, 724-8, vol. 307, 23 June 1886, 193; W.C. Magee, 'The state and the Sermon on the Mount', *Fortnightly Review*, vol.47 n.s., 1890, 42-3.

⁷⁴ S. Blackstone, 'Paternal government: whither are we drifting?', *St Pauls Magazine*, vol.12, 1873, 721, 724-5.

⁷⁵ J. Butler, *Government by Police*, London, Dyer Bros., 1879, 7. Butler's pamphlet was revised and reprinted in 1888.

some people so blindly worship'.⁷⁶ Very often 'benevolent' people, with 'a hobby or panacea for putting right' a social evil, demanded new laws but:

the fact seems to have been altogether overlooked that by the multiplication of laws you necessarily multiply offences, though those offences may be only of a technical kind, and that you necessarily multiply also the agents whose duty it is to see that these laws are obeyed, and to bring up for punishment those who infringe them.⁷⁷

While many offences were 'not morally criminal', the pernicious result of this legislation was to criminals many normally law-abiding citizens and to swell the number of the criminal class. Even worse, Parliament apparently assumed that:

we are to continue for ever to have amongst us so many thousands of habitual criminals, of outcast women, of drunkards etc., and on this assumption it frames measure upon measure for the regulation of these evils, and for compulsory dealing with the victims of them when they have reached a certain state of hopeless depravity.⁷⁸

There was little attempt by the state, Butler argued cogently, to prevent or eradicate evils, only to regulate them, giving the state an opportunity for repeated assertions of its authority.

The fear that the liberty of all citizens was under threat was voiced regularly to 1914 and led to the formation in London of a number of anti-state pressure groups. These included the Liberty and Property Defence League formed in 1882, the Law and Liberty League formed in 1887, the Sporting League formed in 1894, the Police and Public Vigilance Society formed in 1902, and the Anti-Puritan League for the Defence of the People's Pleasure formed in 1906. The most important libertarian group was the Vigilance Association for the Defence of Personal Rights formed in 1871 and from 1886 known as the Personal Rights Association. Growing out of the campaign to repeal the Contagious Diseases Acts, the Personal Rights Association was established because of a perception that:

a period was approaching when the functions of legislation would be more delicate and difficult than they had ever been before, when society would be confronted with many complex social problems, and when even the philanthropic tendencies of the age would but increase the danger of over-much and over-hasty legislation ... [leading to] the infraction of justice between class and class; ... the inevitable extension of police espionage and inquisitorial powers; to the handing over whole departments of life in which

76 Butler, *Government by Police*, 1888, 48.

77 Butler, *Government by Police*, 1879, 56

78 *ibid*, 58.

action should be voluntary, to the control of the police; to the substitution of physical coercion for moral restraint ...⁷⁹

When proposed legislation seemed likely 'to encroach upon personal rights and liberties', the Personal Rights Association's combative 'leading light and directing brain' Joseph H. Levy immediately 'took steps to concentrate the forces of liberty in opposition to it'.⁸⁰ 'Moral diseases', Levy declared, could not be 'uprooted by the policeman's truncheon': freedom was 'the fundamental condition of morality'.⁸¹ Most libertarians wanted the state to confine itself to maintaining 'a judicial system' that was 'certain, cheap, speedy, and accessible' and not to creating a criminal justice system that was unnecessarily meddlesome and punitive.⁸²

In general the libertarian pressure groups, despite notable defeats, arguably played a significant role in stemming the tide of the advancing state. Their parliamentary members certainly made their presence felt. They alerted the House of Commons to the implications of illiberal bills and sometimes, using delaying tactics, succeeded in blocking their enactment; sometimes they lessened the severity of particular clauses; occasionally they secured the repeal of illiberal statutes. But they were not as successful as they had hoped and in 1913 disillusionment ran deep: the Personal Rights Association noted that the legislative encroachment of government was:

far too voluminous for any effective oversight by our elected representatives; ... more and more the incubus of government regulation of our lives threatens to be left in the hands of a permanent staff of bureaucracy, against whom we have no effective protection.⁸³

This was an overly pessimistic, if not miscued, conclusion. For one thing, the judicial system frustrated the designs of the administrative state.⁸⁴ For another, as we have already noted, the Metropolitan Police did not enforce all laws to the letter and certainly never secured the financial and manpower resources to tackle immoral behaviour effectively. Although the enforcement of new legislation usually had an immediate impact and arrest rates increased, suppliers of immorality responded to police intervention by becoming more organised and professional. As the cases of pimps, brothel-keepers, proprietors of gambling clubs, and street bookmakers demonstrated, they took greater precautions for self-protection and made arrest more difficult.

79 *Journal of the Vigilance Association for the Defence of Personal Rights*, 15 Jan. 1881, 1.

80 Annual report of the Personal Rights Association 1913, 18; *The Times*, 12 Nov. 1913, 11; *Individualist*, Nov.-Dec. 1913, 77-8.

81 J.H. Levy, 'Freedom: the fundamental condition of morality' in A. Goff and J.H. Levy, *Politics and disease*, London, King, 1907, 204-5.

82 *Personal Rights Journal*, Feb. 1892, 122-3; W. Donisthorpe, *Law in a free state*, London, Macmillan, 1895, 56-7.

83 Annual report of the Personal Rights Association 1913, 20.

More generally, we can question the extent to which coercive criminal laws were able to change individual behaviour. Fear of punishment or the desire of the status-conscious to appear 'respectable' might force some individuals to abstain from immoral behaviour, at least in public.⁸⁵ But outward or public conformity with the moral imperatives of middle-class 'faddist busy-bodies' did not mean that the private behaviour of London workers had greatly changed.⁸⁶ All most Londoners wanted was:

to be left alone. They don't want to be cleaned, enlightened, inspected ... they don't want regulations of the hours of their drinking ... They don't want compulsory thrift, elevation to remote standards of virtue ... irritation into intellectual or moral progress.⁸⁷

Chary of attempts to enforce alien moral values, most London workers, let alone the regularly unemployed and the poor, became more self-contained and defensive: by 1914 they were 'neither Christian, provident, chaste, nor temperate'.⁸⁸ The unremitting campaigns against prostitution, drunkenness, and gambling 'affected the locations and forms of those practices, but hardly affected their ubiquity and frequency'.⁸⁹ To conclude: no one could discount the power of the criminal law, most spent at least some of their time outwitting it, many endured arrest, but it changed the behaviour of relatively few.⁹⁰

84 E.W. Williams, 'Courts and the Executive', *Nineteenth Century and After*, vol.70, 1911, 1059-77; E. Barker, 'The "Rule of Law"', *Political Quarterly*, vol.2, 1914, 117-40.

85 MacLeod, *Class and religion*, 218, 221.

86 Thompson, 'Social control', 206-8; Dixon, *From prohibition*, 78.

87 C.F.G. Masterman, *The condition of England*, London, Methuen, 1960, 92. (First publ. 1909).

88 G. Stedman Jones, 'Working-class culture and working-class politics in London, 1870-1900' in G. Stedman Jones, *Languages of class: studies in English working class history 1832-1982*, Cambridge, Cambridge University Press, 1983, 196; R. McKibbin, *The ideologies of class: social relations in Britain 1880-1950*, Oxford, Clarendon Press, 1990, 297, ch.5.

89 V.A.C. Gatrell, 'Crime, authority and the policeman-state' in F.M.L. Thompson (ed), *The Cambridge social history of Britain 1750-1950*, Cambridge, Cambridge University Press, 1990, vol.3, 289.

90 It has been suggested that by 1914 moral reformers had become disillusioned with the failure of 'criminal law regulation' and emphasised prevention or 'moral instruction' rather than punishment as a solution to immorality, see F. Mort, *Dangerous sexualities: medico-legal politics in England since 1830*, London, Routledge Kegan Paul, 1987, 163, 174; Wiener, *Reconstructing the criminal*, 365-7, 371, 374; F.H. Hilliard, 'The Moral Instruction League 1897-1919', *Durham Research Review*, vol.3, 1961, 53-63.