

Normative but Not Necessary: A Biblical Case against Criminal Punishment for Post-Abortive Women

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Abstract

The Supreme Court's reversal of *Roe v. Wade* was a victory for the pro-life movement and primarily pro-life evangelicals. But *Roe*'s reversal also comes with challenges for pro-life evangelicals. Pro-life evangelicals desire strict abortion laws to protect the unborn. But historically, pro-life evangelicals have rejected the idea of criminal prosecution for women who violate such laws. Progressive voices on the political left argue pro-life evangelicals will now seek criminal punishment for post-abortive women. Pro-abortion advocates contend that evangelicals are logically inconsistent in labeling abortion murder if they do not pursue criminal prosecution for post-abortive women. Also, abortion "abolitionists" within evangelism argue that some form of punishment is appropriate if abortion is murder. Abortion abolitionists contend that Scripture's *lex talionis* principle necessarily requires criminal retribution when innocent life is unjustly taken. There is uncertainty regarding the criminal prosecution of post-abortive women within and without evangelicalism. This essay argues that the evangelical conception of retribution establishes normative values that dignify all life, but all things considered, these principles do not necessarily require criminal punishment when laws are broken. Therefore, pro-life evangelicals are logically consistent when they contend for highly restrictive abortion laws while at the same time rejecting the notion of criminal punishment for post-abortive women.

Keywords: abortion, abortion abolitionist, criminal punishment, evangelical, retributive justice

The Supreme Court's reversal of *Roe v. Wade* was a victory for the pro-life movement and primarily pro-life evangelicals. But *Roe*'s reversal also comes with challenges for pro-life evangelicals. Pro-life evangelicals desire strict abortion laws to protect the unborn. Historically, the sanctity of life movement has rejected criminal punishment for post-abortive women. While some fear *Roe v. Wade*'s reversal will increase the likelihood of criminal prosecution for women, to date, mainstream pro-life leaders unequivocally reject the idea of criminal punishment.¹ Sanctity of life attorney Paul Benjamin Linton contends that there is reluctance under the law to punish women for abortion.² And legal historian Mary Ziegler argues that pro-lifers have traditionally adopted a legal strategy that sought to protect women, not to punish them.³ Consequently, criminal punishment for post-abortive women has not been a priority for pro-life advocates.

However, Ziegler also contends that the pro-lifers often argue inconsistently.⁴ Ziegler claims that it is hard to reconcile that pro-lifers do not want to punish women given that anti-abortion advocates view abortion as murder.⁵ Furthermore, Elizabeth Dias suggests that rhetoric within the pro-life movement has energized abortion abolitionists.⁶ Abortion abolitionists believe legal retribution is necessary when abortion laws are violated. But the abortion abolitionist

¹ On May, 12, 2022 [The National Right to Life website](https://www.nrlc.org/uploads/communications/051222coalitionlettertostates.pdf) released an open letter to law makers rejecting criminal prosecution for women who have an abortion. National Right to Life argues that women who have abortions are victimized by "a callous industry created to take lives; an industry that claims to provide for "women's health," but denies the reality that far too many American women suffer devastating physical and psychological damage following abortion." See <https://www.nrlc.org/uploads/communications/051222coalitionlettertostates.pdf>.

² Paul Benjamin Linton, "Should Women Be Prosecuted for Abortion?" *The Human Life Review* 43.2 (Spring 2017): 28.

³ Mary Ziegler, "Some Form of Punishment: Penalizing Women for Abortion," *William Mary Bill Rights J.* 26.3 (2018): 735.

⁴ Ziegler, "Some Form of Punishment," 738.

⁵ Ziegler, "Some Form of Punishment," 739.

⁶ Elizabeth Dias, "Inside the Extreme Effort to Punish Women for Abortion," *The New York Times*, July 1, 2022, <https://www.nytimes.com/2022/07/01/us/abortion-abolitionists.html>.

movement has remained on the fringes of the abortion debate until recently. In 2021, a resolution passed the floor of the Southern Baptist Convention supporting criminal punishment for post-abortive women.⁷ Yet, Dr. Richard Land, the former president of the Ethics and Religious Liberty Commission of the South Baptist Convention, notes, “This is not indicative of where the vast majority of Southern Baptists are on the issue.”⁸ Subsequently, the issue of criminally prosecuting post-abortive women remains vague both in and outside the pro-life community.

Nevertheless, conservative evangelical social ethics contains principles that ardently reject abortion while denying the necessity of criminal punishment for women who participate in it. The Bible’s conception of law maintains principles that support the sanctity of life while also rejecting the necessity of criminal retribution for post-abortive women. This essay argues that the evangelical conception of retribution establishes normative values that dignify all life, but all things considered, these principles do not necessarily require criminal punishment when laws are broken. Therefore, pro-life evangelicals are logically consistent when they contend for highly restrictive abortion laws while at the same time rejecting the notion of criminal punishment for post-abortive women.

Beyond Victimization

Historically, anti-abortion advocates have argued that abortion victimizes two people—the fetus and the mother. While it is obvious how the innocent fetus may be considered a victim, it is not

⁷ Bob Smietana, “Evangelical Pro-Lifers Clash Over Criminalizing Abortion,” *Christianity Today*, May 19, 2022, <https://www.christianitytoday.com/news/2022/may/abortion-abolition-criminalize-women-tom-ascol-roe-v-wade-n.html>.

⁸ Richard D. Land, “What’s the Best Way to Be Pro-Life?: A Southern Baptist Debate,” *Biblical Recorder*, May 18, 2022, <https://www.brnow.org/opinions/voices-opinion/whats-the-best-way-to-be-pro-life-a-southern-baptist-debate/>.

entirely clear how the same can be said of the mother. Furthermore, victimization arguments are unclear and present problems in modern times.

Before *Roe*, women were considered victims due to the relative danger of the procedure itself.⁹ Pregnant women were considered vulnerable because unscrupulous doctors were often willing to profit from illegal abortions. Sanctity of life advocates believed that if women faced criminal punishment for abortion, they would be less likely to testify against doctors who performed the illegal act.¹⁰ Therefore, non-punishment was a matter of legal utility.

Furthermore, before *Roe*, women were often considered victims of self-serving men who demanded an abortion. Mary Ziegler notes that the Supreme Court of Connecticut reinforced the concept of victimization in its 1904 ruling on *State v. Carey*.¹¹ In *State v. Carey*, the court charged Michael Carey with encouraging nineteen-year-old Ida Lafferty to obtain an illegal abortion. The court explained, “The public policy which underlines this legislation is based largely on protection due to the woman—protection against her own weakness as well as the criminal lust and greed of others.”¹² Therefore, before *Roe*, women were considered victims of predatory doctors or unprincipled men.

Moreover, following the 1973 *Roe* decision, the language around victimization took on a different hue. The National Right to Life Coalition’s open letter argues that women are victims of crushing psychological and emotional penalties of abortion. NRLC contends that abortion providers often leave women alone after performing the abortion.¹³ In a 2002 study found in the *Journal of Orthopsychiatry*, Priscilla Coleman found women who have abortions experience 2.6

⁹ Linton, “Should Women Be Prosecuted for Abortion?” 30.

¹⁰ Linton, “Should Women Be Prosecuted for Abortion?” 30.

¹¹ Ziegler, “Some Form of Punishment,” 744.

¹² Ziegler, “Some Form of Punishment,” 744.

¹³ See open letter to lawmakers rejecting criminal persecution
<https://www.nrlc.org/uploads/communications/051222coalitionlettertostates.pdf>.

times more psychiatric issues in the first ninety days following an abortion and 17 percent higher mental health claims over the following four years than women who chose to give birth.¹⁴ The pro-abortion industry often dismisses the emotional and psychological trauma facing post-abortive women. Subsequently, sanctity of life advocates contend women are victims of an industry that does not equip mothers for post-abortive trauma.

Mary Ziegler contends that viewing mothers as victims served the political needs of the pro-life movement.¹⁵ Ziegler says, “As activists realized in the early 1990s, their movement lost ground when voters viewed abortion opponents as moral absolutists, indifferent to the well-being of women. To address this image problem, pro-lifers began highlighting women coerced or manipulated into choosing abortion.”¹⁶ In short, pro-lifers understood that anti-abortion legislation could only win the hearts and minds of voters if women were thought of as victims. Consequently, Ziegler contends that the victimization argument is merely a political tactic intended to secure votes.

Nevertheless, victimization arguments are not without problems. First, they undermine human agency. Women who visit abortion clinics do not magically appear in the abortion doctor’s office. Women must engage in the process of reflection and deliberation before actively seeking an abortion. This is not to say that fear, anxiety, or social pressures do not influence the decision. But as Michael Bratman points out, “Whenever there is a motivated intentional action, the agent both has the capacities needed for normative deliberation and accepts relevant premises.”¹⁷ Evangelical ethicist Oliver O’Donovan notes that the capacity to deliberate about

¹⁴ Priscilla K. Coleman, David C. Reardon, Vincent M. Rue, and Jesse Cougle, “State-Funded Abortions versus Deliveries: A Comparison of Outpatient Mental Health Claims over 4 Years,” *Am. J. Orthopsychiatry* 72.1 (2002): 141–52.

¹⁵ Ziegler, “Some Form of Punishment,” 753.

¹⁶ Ziegler, “Some Form of Punishment,” 783.

¹⁷ Michael E. Bratman, “Two Problems about Human Agency,” *Proc. Aristot. Soc.* 101 (2001): 310.

specific actions before engagement renders a person responsible.¹⁸ And theologian Anthony Hoekema contends that making choices is essential to our status as image bearers, rightly saying,

The ability to make choices is an aspect of the image of God in its broader structural sense. The understanding that human beings have this capacity for choice, and if they retain this capacity even after the Fall, is, therefore, an essential emphasis in the Christian doctrine of man. The Bible always addresses humans as persons who can make decisions and who are responsible for the decisions they make. God does not deal with human beings as if he or she were a “stick” or “stone”; he deals with man and woman as a person who must respond to him and who is held accountable for the nature of her or his response.¹⁹

Predation arguments also seem to infer that pregnant women are not rationally capable of making sound decisions when confronted with emotional stress. Thus, a women’s agency becomes problematic to victimization arguments.

Second, the unscrupulous man argument trends toward misogyny. There is no doubt that men can pressure women to have sex and then have an abortion. But the unscrupulous man argument seems to imply that women are not capable of resisting male pressure. While biblical history does present several examples of men who victimize women (Gen 33:1–4; 2 Sam 11:3–5; 2 Sam 13:12–14), Scripture also presents women as sexual beings who are willing to participate in sexual activity (Gen 39:6–7; Deut 22:20–30). The unscrupulous man argument as presented in *State v. Carey* assumes what was true in one situation is true in all circumstances. Consequently, arguments like those found in *State v. Carey* present all women as weak and unable to realize their sexuality fully.

Third, Mary Ziegler’s claim that non-punishment arguments helped the pro-life movement does have merit. Polling data in the mid-1980s discovered that no one would support

¹⁸ Oliver O’Donovan, *Self, World, and Time*, Ethics as Theology 1 (Grand Rapids, MI: Eerdmans, 2013), 16.

¹⁹ Anthony A. Hoekema, *Created in God’s Image* (Grand Rapids, MI: Eerdmans; Carlisle, UK: Paternoster Press, 1986), 229.

abortion if it were thought to hurt women.²⁰ Caitlin Borgmann contends leaders of the mainstream anti-abortion movement believed that an incrementalist strategy would keep abortion alive in the public consciousness while gradually turning public opinion against abortion.²¹ And the Supreme Court's recent decision to overturn *Roe*, to some extent, does seem to affirm that the non-punishment approach had practical benefits. Voters elected pro-life candidates who eventually appointed the justices that struck down *Roe*. But if the non-punishment approach is valued only for its political benefits, it becomes unstable. For instance, if punishing women suddenly became the majority opinion, it is conceivable that prosecutors could seek criminal sentencing. Thus, the victimization historical argument would seem to be disingenuous at best and manipulative at worst. Subsequently, the non-punishment approach must be fixed in something surer than victimization and political expediency.

Biblical Criminal Justice

The argument about post-abortive punishment is not a debate about the nature of abortion itself.²² Pro-life evangelicals unequivocally believe that abortion is unjust killing, which is explicitly forbidden in the sixth commandment.²³ Thus, the debate over post-abortive punishment is not about the nature of abortion. Rather, the debate is about the extent to which biblical principles can or should inform one's conception of modern criminal justice. Subsequently, one must understand the logic many retributivists apply when applying biblical principles to modern criminal justice.

²⁰ Ziegler, "Some Form of Punishment," 753.

²¹ Caitlin E. Borgmann, "Roe V. Wade's 40th Anniversary: A Moment of Truth for the Anti- Abortion- Rights Movement?" *Stanford. Law Policy Rev.* 24.1 (2013): 264.

²² International Coalition of Absolutists Societies, "Immediatism: Abolish Human Abortion," accessed September 20, 2022, <https://abolishhumanabortion.com/immediatism/>.

²³ John M. Frame, *The Doctrine of the Christian Life* (Phillipsburg, NJ: P&R, 2008), 686.

One may reasonably argue that biblical passages such as Gen 9:5–6, Exod 21:24, Lev 24:20, Deut 19:21, Matt 7:2, and Rev 18:6–7 necessarily demand retribution when intentional and unjust killing occurs. The logic is as follows: an abortion intentionally and unjustly kills an innocent life; biblical law prescribes retribution for intentional and unjust killing; therefore, biblical law requires some degree of criminal punishment for those who kill through abortion. Consequently, one's argument for criminal punishment seems logically reasonable if one believes Scripture is authoritative for all matters of life.²⁴

Nevertheless, the Bible's vision of criminal justice is more comprehensive than mere legislation and sentencing. The biblical legal system integrated several subsets of criminal justice, establishing a multidimensional law scheme. These subsystems distinguish between law-making, policing, prosecuting, judicial discretion, sentencing, probation, and imprisonment. Criminal justice scholars John Braithwaite and Philip Pettit recognize that justice demands that every legal system properly balance each subsystem carefully.²⁵ For instance, if a society emphasizes one subsystem without carefully considering its effects on another, it risks destabilizing the entire justice ecosystem. Braithwaite and Pettit make a compelling argument that societies that overly rely on retribution as the means for deterrence often cross moral boundaries in other subsystems.²⁶

Nevertheless, when one surveys the biblical canon, one notices that the Bible's principles of retribution do not ignore the interaction across judicial subsystems. Instead, the Bible's retributive commands function within a complex network of checks and balances. Consequently,

²⁴ Evangelical Christianity is distinctive from mere Christianity because evangelical Christianity believes in the authority of scripture for all matters of life and salvation.

²⁵ John Braithwaite and Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Oxford, UK: Clarendon Press, 1990), 18.

²⁶ Braithwaite and Pettit, *Not Just Deserts*, 110.

when one considers biblical case law, one will see that retributive commands are not absolute when all subsystems of justice are considered.

Social Aims of Israel's Legislation

Laws in any society are made for a purpose. Laws protect interests. Laws restrict power. Laws are based on what society deems good, right, and moral, and laws seek to balance different competing interests that exist within any given society.²⁷ The Bible's laws served God's social purposes in four primary ways. First, biblical laws amplified the value of human dignity. Second, biblical laws established a social order whereby qualitative values were recognized. Third, biblical laws sought to deter evil while balancing the present social realities. Fourth, biblical laws sought to direct the spiritual life of God's people. Consequently, once one takes into consideration the multifaceted nature of biblical law, one can recognize that retributive statutes served to create normative standards but did not necessarily demand absolute enactment.

First, biblical laws emphasized the dignity of all people. Israel's conception of *tzelem elohim* (image of God) was dramatically different from other ancient Near Eastern societies. Evangelical scholar Christopher Wright notes that Old Testament Israel's law codes were far more humane than those of other neighboring Near Eastern contemporaries.²⁸ Wright notes that the Decalogue set out boundaries that valued all human life. Yet, the Decalogue itself did not prescribe specific surveillance practices, prosecutorial standards, or sentencing penalties.²⁹ Instead, the Decalogue established objective principles to protect human dignity across all life's spectrums. Wright notes that Israel's retributive laws provided principles for maximum limits,

²⁷ Mark D. Liederbach and Evan Lenow, *Ethics as Worship: The Pursuit of Moral Discipleship* (Phillipsburg, NJ: P&R, 2021), 419.

²⁸ Christopher J. H. Wright, *Old Testament Ethics for the People of God* (Downers Grove, IL: IVP Academic, 2004), 309.

²⁹ Wright, *Old Testament Ethics for the People of God*, 290–91.

proportionality, supervision, and no gradation of penalty for differing social classes; thus, the principles established in the Decalogue recognized the value of all human life.³⁰ Consequently, God's foundational legislation, the Ten Commandments, established normative moral principles that underscored the value of all human life (including the criminal's life), but they did not necessarily provide detailed actions for every subsystem within the ancient criminal justice system.

Second, God's retributive directives established a normative system that maintained society's proper ordering of values. Rabbi W. Gunther Plaut suggests that modern readers misunderstand the Torah's teaching regarding retribution.³¹ Plaut argues the Torah was a significant advancement in the sphere of criminal law because it recognized the inherent value of created things.³² Israel's laws of *lex talionis* helped to keep values adequately balanced within the covenant community.³³ Torah law recognized the intrinsic hierarchy within creation because it made strict distinctions between humans, animals, and non-living property. For instance, one could not compensate a human's life with an animal's life. Nor was one permitted to execute a human life for stealing property. David's emotional response to Nathan in 2 Sam 12:1–6 is an example of Israel's normative compensation laws. Here David angrily pronounced that the wealthy man in Nathan's story deserved to die. But the Torah did not allow human blood to be shed for issues of tort. Biblical scholar and attorney Anthony Phillips notes that Israel's punishment for tort was distinctly compassionate compared with the Code of Hammurabi.³⁴

³⁰ Wright, *Old Testament Ethics for the People of God*, 315.

³¹ W. Gunther Plaut and David E. S. Stein, *The Torah: A Modern Commentary*, rev. ed. (New York: Union for Reform Judaism, 2005), 571.

³² Plaut and Stein, *The Torah*, 572.

³³ Plaut and Stein, *The Torah*, 572.

³⁴ Anthony Phillips, *Essays on Biblical Law* (London: Sheffield Academic Press, 2004), 2.

Israel's punishment for tort crimes required a fourfold restoration according to Exod 22:1.³⁵

Thus, Israel's penal code established a system of equal justice, which distinguished them among the nations.³⁶ Therefore, the Torah's penal code also sought to recognize God's ascribed value within each created object, but this did not require that strict criminal sentencing was necessary for every circumstance.

Moreover, Israel's *lex talionis* principle is not considered a hard-and-fast rule. Hebrew jurists would have had too many cases in which the literal application of the *lex* could not have achieved the infliction of an exactly equivalent penalty upon the wrongdoer. If jurists necessarily applied the eye-for-eye in every circumstance, then the outcome would seem to be a grave injustice. For example, if a person blind in one eye had her other eye destroyed, requiring a single eye from the offender would not be a precise equivalent since only one party would end up totally blind. Or in the case of injuries that only partially incapacitated the organ of another, it would be extremely difficult to inflict a literal, in-kind injury.³⁷ While it would be wrong to accuse abortion abolitionists of seeking a literal eye-for-eye justice for post-abortive women, since there are no calls for post-abortive women to receive capital punishment, the necessity of applying *lex talionis* animates much argumentation toward punishment.

Third, God's retributive directives intended to restrain evil while considering the present cultural conditions. The Torah's law codes set normative moral boundaries, but criminal sentencing also considered specific moments in time. For instance, the Old Testament included several examples whereby criminal sentencing varied at different cultural moments. Cain is the prototype example where exact *lex talionis* was applied. But it is God himself who forgoes exact

³⁵ Wright, *Old Testament Ethics for the People of God*, 308.

³⁶ Plaut and Stein, *The Torah*, 572.

³⁷ Christopher D. Marshall, *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment*, Studies in Peace and Scripture (Grand Rapids, MI: Eerdmans, 2001), 80.

criminal retribution for Abel's murder.³⁸ This is not to suggest Cain was exempt from punishment. The Reformer John Calvin noted God's judgment proved more severe than exact life for life retribution.³⁹ Calvin said, "Cain was not only condemned to personal exile, but was also subjected to still more severe punishment; namely, that he should find no region of the earth where he would not be of a restless and fearful mind; for as a good conscience is properly called 'a brazen wall,' so neither a hundred walls, nor as many fortresses, can free the wicked from disquietude."⁴⁰ Calvin rightly noticed the internal disquieting of the soul is often a far worse condition than strict criminal punishment. Calvin noticed that God saw no need to summon angels to ensure a just trial took place.⁴¹ Rather, God intrinsically linked action and consequences within the inner psyche of one's moral intuitions. Subsequently, the Bible recognizes that justice is sometimes administered best through the conscience and not a civil criminal sentence.

Additionally, Calvin argued God was not bestowing special mercy upon Cain the murderer or ignoring the severity of his crime.⁴² Instead, God considered the present social conditions when interacting with Cain. Calvin noted,

God would take care to prevent anyone from easily breaking in upon him to destroy him; not because God would institute a privilege in favor of the murderer, or would hearken to his prayer, but because he would consult for posterity, in order to the preservation of human life. The order of nature had been awfully violated; what might be expected to happen in future, when the wickedness and audacity of man should increase, unless the fury of others had been restrained by a violent hand?⁴³

³⁸ Wright, *Old Testament Ethics for the People of God*, 309.

³⁹ John Calvin, *Commentary on the First Book of Moses Called Genesis*, 2 vols., trans. John King (Grand Rapids, MI: Baker, 1999), 1:209–10.

⁴⁰ Calvin, *Commentary on the First Book of Moses Called Genesis*, 1:209–10.

⁴¹ Calvin, *Commentary on the First Book of Moses Called Genesis*, 1:209.

⁴² Calvin, *Commentary on the First Book of Moses Called Genesis*, 1:214.

⁴³ Calvin, *Commentary on the First Book of Moses Called Genesis*, 1:214.

Cain lived during a period when population growth was essential. After he received God's mark, which served as a warning against further violence and cruelty, Cain immediately "knew his wife, and she conceived and bore Enoch" (Gen 4:17). Calvin contended that God spared Cain's life so that he might "consult" his "posterity" to preserve human life.⁴⁴ Consequently, Cain's life serves as an example where Scripture reveals the normative nature of moral principles but also allows for considering all social concerns when establishing just punishment.

One may rightly argue that the Cain account occurred before God revealed the written law on Mt. Sinai. But when one reads the Sinai Decalogue of Exodus 20 and compares it with the account found in Deuteronomy 5, one will notice subtle changes. These changes do not reflect any deviation from the absolute nature of moral law. But they do seem to indicate a shift in the law's application.

The Sinai Decalogue reflects concerns consistent with Israel's status as a nomadic people. But the Deuteronomic account reveals interests Israel would have as a nation once settled in the land. Israel's transitionary period from nomadic wanderers to a nationalized people displayed a change in how the law was applied. First, one notices an additional clause is added to the command regarding parental obedience. The Sinai account, given under the nomadic phase, promises that obedience to parents carries an assurance of "long life in the land" (Exod 20:12). But on the eve of becoming a nation, the Deuteronomic account adds an additional promise, "that it may go well with you in the land that the LORD your God is giving you" (Deut 5:16). The Deuteronomic extension of material blessing would only make sense as the people prepared to become a national entity. Philips notes that the extension of this clause served to secure obedience to the unenforceable law of humaneness and righteousness that was already found

⁴⁴ John *Commentary on the First Book of Moses Called Genesis*, 1:214.

within the Exodus record.⁴⁵ Israel's transition into the promised land would present the fledgling nation with new temptations as they gained national power.

Second, the Deuteronomic Decalogue reverses the order of house and wife in the commandment on coveting. The Sinai account reads, "You shall not covet your neighbor's house; you shall not covet your neighbor's wife, or his male servant, or his female servant, or his ox, or his donkey, or anything that is your neighbor's" (Exod 20:17 ESV). But the Deuteronomic record displays a significant change in the word order: "You shall not covet your neighbor's wife. And you shall not desire your neighbor's house" (Deut 5:21 ESV). On the eve of Israel's entrance into the land, one notices a deliberate shift in the law's application, which would afford women equality under the law. No longer could a wife be listed alongside her husband's property. Once Israel entered the land, a wife acquired the rights under the law and was herself considered a full member of the elect community with all of the privileges and duties that entailed (Deut 12:12–18; 16:11).⁴⁶ While the moral law's principles are absolute, Moses extended and modified the law's application in relation to the nation's social conditions.

King David's experience serves as another example of normative but not necessary criminal punishment. David's adulterous and murderous actions unambiguously violated the Torah's criminal statutes. Yet, David did not face the criminal prosecution clearly put forth in Israel's law (Lev 20:10; 24:17; Deut 22:22). Commentators offer several reasons why the Lord chose not to enforce Israel's statutes and among these reasons are sociological and contextual.⁴⁷ Robert D. Bergen rightly recognizes that David's sin happened in the early days of Israel's

⁴⁵ Phillips, *Essays on Biblical Law*, 8.

⁴⁶ Phillips, *Essays on Biblical Law*, 8.

⁴⁷ Robert D. Bergen, *1 & 2 Samuel*, NAC 7 (Nashville, TN: Holman, 1996), 372–73.

monarchy.⁴⁸ Thus, God spared David the Torah's exact criminal punishment because his crimes took place in the nascent days of the Davidic dynasty with all its messianic promise. But this is not to suggest David did not incur God's judgment. God pronounced a stunning fourfold non-criminal punishment in 2 Sam 12:7–13. And while God's judgment did not necessarily result in legal punishment, David suffered just consequences in accordance with the principle of *lex talons*.⁴⁹ Yet, David did not incur the Torah's exact criminal sentencing prescribed for murder and adultery. To this point, Christopher D. Marshall notes that Scripture often portrays the theme of retribution within a paradigm of controls and counter-themes.⁵⁰ Marshall persuasively argues that the theme of God's redemption is often contrasted against the counter-theme of exact justice.⁵¹ Thus, in the examples of David and Cain, God's redemptive purpose superseded the exact literal demands of justice. Consequently, the retributive penal code in the Old Testament emphasized normative principles for justice, but the application of retributive punishment considered the impact on various social concerns, which allowed for variations in criminal sentencing.

Redemptive Aims of Israel's Legislation

Israel's retributive punishments also considered the nation's unique role in redemptive history. Anthony Phillips notes Israel's law was often understood in a theologized form with much parenthetical material.⁵² He contends that some of the laws appear to be idealized pictures of

⁴⁸ Bergen, *1 & 2 Samuel*, 369.

⁴⁹ David incurs the judgment required under the principle of *lex talionis*; "the sword will never depart from your house" (four of his sons would experience premature death). "I will take your wives and give them to one who is close to you, and he will lie with your wives" (what David did in secret, would be done in broad daylight before Israel).

⁵⁰ Marshall, *Beyond Retribution*, 126.

⁵¹ Marshall, *Beyond Retribution*, 126.

⁵² Phillips, *Essays on Biblical Law*, 49.

what should happen, and much of the law could not have been enforced.⁵³ Consequently, one must consider that Israel's law also reflected a theological purpose that extended beyond the literal requirements of social justice.

Evangelical theologian Vern Poythress contends that God's punishments in the Old Testament foreshadowed God's final judgment and messianic hope.⁵⁴ Poythress notices Old Testament legal code worked from two normative principles of justice.⁵⁵ First, legal judgments contained the principle of similar measure. Second, legal judgments contained the principle of restitution. Consequently, both of these normative principles informed the nation's messianic expectations.

The Old Testament principle of similar measure informed the messianic vision because it revealed the need for spiritual deliverance. The biblical doctrine of depravity understands sin as an attempt to usurp God's authority; thus, sin distorts God's inherent goodness. Dietrich Bonhoeffer notes, "Instead of knowing the God who is good, and instead of knowing all things in Him, humans now know themselves as the origin of good and evil."⁵⁶ Poythress sees that "in sin, we engage in an attempt virtually to destroy God's authority and his claim on us; humans seek to destroy God if could."⁵⁷ Thus, the fit punishment for such rebellion is a replica crime.⁵⁸ Humanity's attempt to destroy God's authority results in God destroying humanity's authority. Poythress contends humanity's destruction is presently experienced as we live with unfulfilled longings, frustrated desires, a sense of powerlessness, and ultimately eternal death.⁵⁹ Poythress

⁵³ Phillips, *Essays on Biblical Law*, 49.

⁵⁴ Vern S. Poythress, *The Shadow of Christ in the Law of Moses*, reprint ed. (Phillipsburg, NJ: P & R, 1995), 111.

⁵⁵ Poythress, *The Shadow of Christ in the Law of Moses*, 112.

⁵⁶ Dietrich Bonhoeffer, *Ethics*, 1st Touchstone ed. (New York: Touchstone, 1995), 23.

⁵⁷ Poythress, *The Shadow of Christ in the Law of Moses*, 111.

⁵⁸ Poythress, *The Shadow of Christ in the Law of Moses*, 111.

⁵⁹ Poythress, *The Shadow of Christ in the Law of Moses*, 111.

sees that the principle of similar measure provided logical reasoning for the doctrine of hell because, if nothing else, hell is thought to be a state of eternal powerlessness. The New Testament authors saw the principle of similar measure justified eternal punishment (Rom 6:23; Eph 4:9; 1 Pet 4:6); thus, the principle of similar measure established the vision for a spiritual savior. Thus, the principle of similar measure found within the Old Testament sentencing codes revealed more than mere social justice. The principle of similar measure revealed humanity's spiritual condition and need for present-day and eternal salvation. So, whereas the principle of similar measure may provide a normative framework for present-day civil sentencing, one must take into consideration the principle's spiritual significance before absolutely applying the principle beyond its spiritual significance. Consequently, one must consider ancient Israel's unique role in redemptive history before applying certain legal principles.

Additionally, Old Testament sentencing codes intended to reflect specific aspects of God's holy character.⁶⁰ Poythress insightfully argues the Torah's principle of restitution was intended to reflect God's orderly and providential care over creation.⁶¹ The Torah envisioned God distributing creation's benefits broadly according to his will. The principle of restitution was intended to reflect God's orderly distribution of benefits and boundaries assigned to each person. For this reason, the principle of restitution required that things, wrongfully taken, were properly restored to their rightful owner as best as possible.

Furthermore, the principle of restitution aimed to chasten criminal motives. Mosaic law required thieves to restore the original thing taken to its original owner, which served to ensure the proper integrity was maintained. But thieves, at times, were required to provide additional in-

⁶⁰ Scott Rae, *Moral Choices: An Introduction to Ethics*, 4th ed. (Grand Rapids, MI: Zondervan Academic, 2018), 92–93.

⁶¹ Poythress, *The Shadow of Christ in the Law of Moses*, 116.

kind payment compensation with the offender's motive. Criminal motive was especially evil, so criminals were required to go beyond mere restoration of the original thing; criminals were required to make an in-kind payment up to four to five times the original amount taken (Exod 22:1–4).⁶² Poythress notes that additional reparations served to reveal God's concern for human motives.⁶³ Consequently, the principle of restitution not only reflected God's orderly character but also his concern for the human heart.

However, criminals who took human life could never satisfy the full restitution requirements. The Torah recognized only God as the originator and the proprietor of life. So, criminals who took life unjustly had no way to satisfy the full in-kind restitution required in the law entirely. Humanity's finitude was revealed in Torah law because humans cannot restore life once it is extinguished. For this reason, the Old Testament law relied on the principle of substitution. Humans were allowed to offer a substitute of the same kind when restoration of the original was impossible. The Old Testament's principle of restitution necessarily required the principle of substitution because, at best, humans could only partially fulfill the demands of recompense in some circumstances.

Additionally, the principle of substitution allowed for a life-for-life exchange when unjust killing took place. Israel's sentencing laws allowed animal life to serve as a substitute for human life in the case of accidental killing. But if human life was maliciously taken, a one-for-one exchange of human life was permitted. The criminal's life was given in exchange for the life of the innocent. Yet, substituting the criminal for the victim was still insufficient to meet the full demands of restitution in two ways. First, the offender could not restore the original life taken.

⁶² Poythress, *The Shadow of Christ in the Law of Moses*, 115.

⁶³ Poythress, *The Shadow of Christ in the Law of Moses*, 118.

Second, the four-to-five-fold recompense would exceed the principle of similar measure.

Consequently, the principle of restitution, including its allowance for substitution, reflected something beyond mere principles of civil law.

The principles of restitution and substitution established key redemptive doctrines necessary for evangelical faith in three ways. First, humans are finite creatures limited in their capacity to fully satisfy the demands of restitution. Second, Old Testament substitutionary sacrifices were permissible yet limited. Third, only a human capable of meeting the law's demands was one willing to substitute their life and held the power to restore original life. Consequently, the principles of restitution and substitution contained within Torah law foreshadowed the substitutionary death and restorative resurrection proclaimed in evangelical Christianity; therefore, one must consider how Israel's laws communicated theological concepts as well as normative standards of justice.

Policing Practices

Israel's justice system also took policing practices into consideration. Ancient Israel maintained an established police force to monitor spiritual crimes. In matters of the ceremonial law, the Levites acted as religious police preventing unauthorized entrance into the tent of meeting.⁶⁴ But Israel did not have a recognized police force assigned to overseeing criminal matters against society.⁶⁵ Anthony Phillips convincingly argues that Israel's criminal laws were not addressed to the judiciary but to the people themselves.⁶⁶ Israel's policing practices were carried out by the community at large. Passages such as Num 35:30 and Deut 19:15 reveal that the community

⁶⁴ Gordon Wenham, *A Guide to the Pentateuch*, Exploring the Old Testament 1, (London: Society for Promoting Christian Knowledge, 2003), 105.

⁶⁵ Wenham, *A Guide to the Pentateuch*, 71.

⁶⁶ Phillips, *Essays on Biblical Law*, 49.

maintained strict regulations for obtaining evidence regarding alleged crimes. Located within the Pentateuch's civil statutes, both Num 35:30 and Deut 19:15 establish that criminal evidence must present fact-testimony from minimally two, but preferably three witnesses.⁶⁷ Numbers 35:30 reveals that even if a murderer was known to be guilty, unless minimally two, preferably three, witnesses were produced, criminal conviction was not possible.⁶⁸ Consequently, Israel's strict regulations on evidence collection superseded the criminal sentencing process.

However, legal scholar Bernard S. Jackson contends that the Pentateuch's requirement of two or three witnesses is not without controversy.⁶⁹ Jackson's essay titled "Two or Three Witnesses" acknowledges that it is not entirely clear if fact-testimony exceeding three witnesses was thought to dilute evidence.⁷⁰ Reuven Yaron makes a compelling case that the term "two or three" witnesses restricted prosecution when three or more witnesses were produced because there was a great chance for evidence tampering.⁷¹ Yet, Jackson takes the position that the regulation of two to three witnesses was meant to ensure a whole collection of evidence. Jackson contends the formula "X or (X+1)" was for the sake of completeness, ensuring that all fact-testimony meets the standard of truth necessary for just prosecution. Regardless of one's interpretation of the phrase "two to three witnesses," it is evident that the Bible's standard of criminal persecution normatively considered policing and surveillance practices.

⁶⁷ Bernard S. Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 153.

⁶⁸ Bernard S. Jackson argues in this essay "Two or Three Witnesses" that uncertainty exists regarding the term "two or three witnesses." Jackson notes the Hebrew language's general weakness in numerical expressions. Jackson makes a compelling case that particular nuance should be applied when citing Num 35:30 and Deut 19:15. Thus we may conclude that two or three witnesses is best expressed as "minimally two, preferable three witness."

⁶⁹ Bernard S. Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 153.

⁷⁰ Jackson, *Essays in Jewish and Comparative Legal History*, 153.

⁷¹ Reuven Yaron, "The Middle Assyrian Laws and the Bible," *Biblica* 51.4 (1970): 553.

Evangelical scholar Gordan Wenham recognizes Israel's community policing standards deal strongly with false witness.⁷² Wenham also notes that Israel's *lex talionis* principle helped to ensure all evidence was brought forth with integrity. For example, if someone falsely accused someone of a crime whose punishment was X, and false witness (evidence) was detected, the accuser would suffer punishment X instead of the person wrongly accused. Additionally, *lex talionis* laws required the witness must also execute the sentence (Lev 24:14; Deut 13:9; 17:7). Thus, the principle of *lex talionis* provides the context for Jesus's acquittal of the woman caught in adultery.

Jesus's encounter with the women caught in adultery is often cited as an example of mercy superseding law. But, while Jesus certainly displayed compassion for the woman, her acquittal also rested in the requirements of *lex talionis* law. John 8:1–11 provides several key facts. First, the woman was caught in the act of adultery, which was a crime punishable by death (Lev 20:10; Deut 22:22). Second, the woman must have been under surveillance given that she was “caught in the act” and immediately brought to an early morning trial (John 8:2). Third, the man was nowhere to be found. In cases such as this, both the guilty man and woman were to be put to death by stoning (Deut 22:22). The bringing of the woman to Jesus was obviously an attempt to ensnare Jesus in a situation in which mercy and justice are made to be opposing principles.⁷³ But when one also considers the evidence, and how it was obtained, it seems likely the woman was entrapped. Thus, Jesus's call for the accusers to cast the first stone not only challenged their moral conscience, it also forced them to give account for the means they employed in her arrest. One would be right to contend this is an argument from silence; the text

⁷² Wenham, *A Guide to the Pentateuch*, 73.

⁷³ Gerald L. Borchert, *John 1–11*, NAC 25 (Nashville, TN: Broadman & Holman, 1996), 373.

does not explicitly say how the woman was apprehended. But the text is clear that the requirement of “two to three” witnesses could not be established. Consequently, the guilty woman was not criminally sentenced, and Jesus was not accused of violating case law.

Judicial Discretion

The Old Testament moral code provides foundational principles for justice. But it does not necessarily follow that the Bible supports today’s vision for a strong “law and order” agenda. Israel’s court procedure was different from Western judicial systems. In Western law systems, the police have reason to suspect a person’s innocence or guilt.⁷⁴ The Western system requires objectivity and impartiality from a judge as they apply the law dispassionately.⁷⁵ But Old Testament Israel did not have an official police force; thus, the accuser was often the personal enemy of the accused. Old Testament judges required discernment to determine not only the guilt of the accused but also the intent of the accuser. Christopher Marshall points out that the judge was expected not only to apply the law properly but to vindicate the righteous. If a judge gave a verdict in favor of the defendant, the judge was considered to have rescued the innocent person from oppression.⁷⁶ But judges also had to discern the accuser’s motive. The *lex talionis* law was never to be used as a means of vengeance (Lev 19:18; Deut 32:35; Prov 20:22; 24:29). Accusers who were found to use the law as revenge were subject to the same penalty initiated toward the accused. Consequently, Israel’s judges were required to exercise a high degree of discernment taking into consideration not only the criminal’s guilt and also the accuser’s role.

⁷⁴ Marshall, *Beyond Retribution*, 48.

⁷⁵⁷⁶ Marshall, *Beyond Retribution*, 48.

⁷⁶ Marshall, *Beyond Retribution*, 48.

Moreover, Israel's legal structure considered the law breaker's motives by establishing "cities of refuge." The creation of "cities of refuge" sought to protect individuals who had unintentionally killed another human being. In Israel, punishment for murder was administered by the family of the victim.⁷⁷ And while there is some debate regarding the translation of the word "kill" in the Hebrew text, the creation of cities of refuge indicated that Israel's law recognized a distinction between murder and manslaughter.⁷⁸ The "avenger of blood" (represented by the victim's family) was permitted to kill the slayer if the killing was deemed intentional.⁷⁹ But if one's killing was not intentional, the slayer could flee to one of the cities of refuge. If that person reached such a city, the judges would discern between the manslayer and the avenger of blood. If the judges discerned that the killing was unintentional, the manslayer was protected within the city's boundaries. Thus, the manslayer was allowed to live a normal life within the city, and following the high priest's death, the manslayer was permitted to return home (Num 35:26–27). Consequently, when one considers the manslaughter texts in Israel's law (Exod 21:12–14; Num 35:9–34; Deut 19:1–13; Josh 20:1–9), one notices that legal cases were not always prosecuted in a straightforward retributive manner; judges considered the nuanced details and the intentions of both the accused and the accuser.

Furthermore, Israel's legal system sought to put forth a fuller justice model than its pagan neighbors. But an absolute retributive system falls short in several ways. First, absolute retributivism considers crime and punishment in non-personal terms. Strict retributivism conceives of justice in mathematical terms: a criminal violates a law, and the criminal suffers the

⁷⁷ Frame, *The Doctrine of the Christian Life*, 687.

⁷⁸ John Frame notes that the Hebrew word *ratsakh* refers to killing that is unlawful or forbidden. It is not used for the killing of animals or for killing in war. That would suggest that the best translation of *ratsakh* is "murder," not the more general "kill" (Frame, *The Doctrine of the Christian Life*, 687).

⁷⁹ Frame, *The Doctrine of the Christian Life*, 687.

assigned penalty. Strict criminal retribution, by nature, punishes overt acts only and does not consider the complexity of human motive, individual character, or circumstances. Second, strict retributivism cannot convert the subjectiveness of human motive into an exact objective punishment. Israel's justice system did take into consideration individual motives as evidenced by its cities of refuge. Hebrew jurists took great care to consider all factors when determining the manslayer's asylum case. While Scripture is clear that human beings can never fully know an individual's motive, nor can fallible human beings know all the circumstances leading to a crime (1 Sam 16:7; Matt 5:8), genuine justice requires that all relevant factors be taken into account.⁸⁰ Miroslav Volf rightly understands the complexities of justice when he says, "From a distance, the world may appear neatly divided into guilty perpetrators and innocent victims. The closer we get, however, the more the line between the guilty and innocent blurs, and we see an intractable maze of small and large hatreds, dishonesties, manipulations, and brutalities, each reinforcing the other."⁸¹ Subsequently, Israel's judicial system maintained a full-orbed conception of justice whereby retribution was normative for unjust killing but not necessarily always practiced.

Is Punishment Ever Permissible?

While God's moral law is absolute, it does not necessarily follow that all violations of his moral law require punishment in criminal courts. But this also does not mean that an extreme case may exist where some punishment may become appropriate. One can imagine a scenario that is so unnatural and heinous, so antithetical to the principles of human life that even natural human pity and mercy must be suppressed in dealing with their perpetrators.⁸² For instance, imagine a man

⁸⁰ Marshall, *Beyond Retribution*, 127.

⁸¹ Miroslav Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation*, revised and updated (Nashville, TN: Abingdon Press, 2019), 116–17.

⁸² Mera J. Flaumenhaft, "The Story of Jonah," *Rev. Polit.* 76.1 (2014): 18.

and woman converting to the ancient Ammonite god, Moloch. According to ancient records, Moloch worship required child sacrifice (Lev 18:21; 20:2–5; 2 Kgs 23:10; Jer 32:35). Now imagine that a man and woman intentionally become pregnant, dismember the fetus in utero, and offer the dismembered parts to Moloch in worship. Imagine further, a single or infertile person wishes also to worship Moloch. The childless worshipers contract the fertile couple to provide fetuses for others to sacrifice. The fertile couple agrees to become pregnant yearly to dismember the fetus in utero and distribute the remains. It seems likely that one's intuition would compel the justice system to act in some manner to prevent further unnecessary killing. While this scenario may seem extreme, it does offer insight into Israel's holy war on Canaan.⁸³ Consequently, while God's moral law does not necessarily require criminal punishment in all circumstances, it also does not restrict criminal punishment under certain extreme conditions.

An Evangelical Response to Criminal Sentencing

Biblical social ethics consider the acting agent's motives, the nature of the action itself, the context within which the act was committed, and the potential relational and circumstantial consequences.⁸⁴ When one considers these moral domains, one realizes the difficulty in calculating a properly ordered criminal punishment in most abortion cases. For instance, Old Testament law took the agent's inner state into consideration. But the nature of an unplanned pregnancy often disorients one's psychological and emotional state. Researcher Kathrine Barton notes that women experiencing unintended pregnancy often experience heightened psychological and emotional distress, including elevated rates of anxiety, depression, and feelings of

⁸³ God commanded holy war against Canaan in part because of the genocide occurring at the Asherah poles. The Asherah poles were well known to be the places of child sacrifice and sexual abuse.

⁸⁴ Mark D. Liederbach and Evan Lenow, *Ethics as Worship: The Pursuit of Moral Discipleship* (P&R Publishing, 2021), 178.

isolation.⁸⁵ One's inner state at the time of the abortion may even hinder one's ability to understand one's own true motive. Scripture is clear that the heart is deceitful and desperately sick; who can understand it? (Jer 17:9). Judges and juries would need to explicitly discern the inner state of a woman, which in most ordinary cases would prove exceedingly difficult. Therefore, in most normal circumstances, the difficulty in knowing a woman's motive seems to allow for non-prosecution.

Additionally, the Bible's principles regarding surveillance make proportional punishment unworkable. In most cases, it seems difficult to conceive that any policing strategy could be implemented that would not also violate existing HIPAA laws. For instance, how would one determine whether a woman miscarried or chose an elective abortion? It seems likely that the move to punish post-abortive women criminally would necessarily require an overhaul of numerous other laws. Also, abortion's private nature makes it challenging to gather all the pertinent evidence involved in the crime. For instance, how would a judge and jury ever know if a woman was subtly pressured, coerced, or perceived to be coerced into an abortion? Subsequently, abortion's intimate relational dynamics seem to make obtaining prosecutorial evidence impractical, which seems to allow for non-prosecution.

Furthermore, one's social circumstances inform one's understanding of abortion. For example, politically conservative states seem to have greater public awareness regarding the immorality of abortion, whereas progressive liberal states may lack transparent education regarding the nature of abortion. Additionally, areas of the nation with exceptionally low church presence may have less awareness of abortion's immorality. Therefore, one's cognitive

⁸⁵ Katherine Barton et al., "Unplanned Pregnancy and Subsequent Psychological Distress in Partnered Women: A Cross-Sectional Study of the Role of Relationship Quality and Wider Social Support," *BMC Pregnancy Childbirth* 17. (2017): 44.

understanding regarding abortion would likely factor into how the state would treat violations of abortion law.

Finally, biblical law is practical and pedagogical. The Bible's laws not only teach humanity about good actions, but they also reveal God's character. Ethicist Scott Rae argues, "Morality is ultimately grounded in the character of God—that is, the ultimate source for morality is not God's commands but God's character."⁸⁶ Evangelicals understand that the cross is where justice and mercy meet; thus, restrictive abortion law teaches God's value for human life and the possibility of non-prosecution demonstrates that compassion is available. Consequently, Evangelicals can contend for highly restrictive abortion laws in order to protect and proclaim the value of human life but also express mercy to women caught in abortion's complexity.

Persuasion not Perfectionism

Conservative evangelicals have stridently proclaimed their opposition to abortion for nearly fifty years, and they will continue to do so. But conservative evangelicals must resist the urge toward perfectionism when considering abortion law. Perfectionism strives to achieve utopia on earth through political means. Evangelical perfectionism envisions an over-realized eschatology while undervaluing the doctrine of depravity. Theologian Helmut Thielicke rightly cautions that perfectionism, on the political right or left, ultimately results in ideological tyranny.⁸⁷ Thielicke argues that if the church fanatically demands political absolutes, then it makes it easy for politicians to say the church's message is unrealistic and to dismiss it quietly

⁸⁶ Scott Rae, *Moral Choices: An Introduction to Ethics*, 4th ed. (Grand Rapids, MI: Zondervan Academic, 2018), 68.

⁸⁷ Helmut Thielicke, *Theological Ethics*, 2 vols., trans. William Henry Lazareth (Minneapolis, MN: Fortress Press, 1969), 2:119.

with a wave of the hand.⁸⁸ The abortion abolitionist's plea for criminal prosecution presents impractical demands in our current political climate. Ethicist Daniel Heimbach also warns that evangelical ethics must take a realistic approach when contending for civil law.⁸⁹ Heimbach rightly contends that perfectionism eventually hardens into dangerous ideologies that ultimately undermine the church's evangelistic mission.⁹⁰ The church's evangelistic mission is one of persuasion and never one of coercion. But perfectionist ideology does not concern itself with winning hearts and minds; perfectionist ideology only seeks its own version of utopia and disregards the faculty of human will. Pro-life evangelicals making unrealistic demands risk losing credibility in the public square, undermining the church's calling as a prophetic witness. Therefore, as pro-life evangelicals continue to oppose abortion, they must also oppose perfectionist visions that undermine the gospel message of justice, mercy, and forgiveness.

Conclusion

Pro-life evangelicals are not inconsistent to strongly oppose abortion while also rejecting the necessity of criminal punishment. In part, the evangelical church's role is to serve the common good by publicly declaring Scripture's normative moral standard. But pro-life evangelicals must also maintain a view of political realism that allows politicians space to imagine workable solutions. Thielicke is again helpful here. He rightly notes that the church is not entrusted with the burden of legislation.⁹¹ Thus, the church does not have at its disposal all the information that is available to judges and legislators when they must make legal decisions.

⁸⁸ Thielicke, *Theological Ethics*, 2:497.

⁸⁹ Heimbach's view is recorded in the forward section of Daniel J. Trippie's, *The Superiority of an Evangelical Model of Religious Liberty: A Critique of Secular and Roman Catholic Conceptions* (Eugene, OR: Wipf and Stock, 2022), xi.

⁹⁰ Trippie, *The Superiority of an Evangelical Model of Religious Liberty*, xi.

⁹¹ Thielicke, *Theological Ethics*, 2:488.

Also, the church does not stand under the burden of actually having to make the decisions; thus, it is exposed to the real temptation toward general and absolute demands.⁹² Thieliicke warns,

under the cover of these radical and spiritually intended—or ostensibly spiritual—demands, what actually takes place is vigorous political activity, but of the kind that lacks the necessary presumptions to make it legitimate. The conscience, which is not compelled by the facts at hand, is not burdened with making the decision, does not have to assume active responsibility for what happens, it is not exposed to the (relative) autonomy of such fears as politics and economics, is all too inclined to be radical and the abstract—even to become Pharisaical or fanatical—because it’s ethical or Christian position apparently allows it to remain aloof.⁹³

Thieliicke’s point is relevant regarding the punishment debate. The abortion abolitionist’s demands for criminal punishment create an aloofness that treats post-abortive women as abstractions, not humans created in the image of God. Therefore, pro-life evangelicals must maintain a balance between contending for the unborn while caring for mothers.

Finally, I argue that pro-life evangelicals continue to oppose abortion and contend for strict abortion laws. But pro-life evangelicals must maintain an “Augustinian sensibility” when engaging the public square. “Augustinian sensibility” is a realistic but hopeful, temperate but reforming, expectant but non-utopian approach to Christian political witness in the finite fallen present world prior to Jesus’s return.⁹⁴ Pro-life evangelicals must recognize that because of our doctrine of the fall, we live in a world that is broken and sinful—we exist in the age between the here and not yet. “Augustinian sensibility” resists the utopian temptation for people on the conservative right and the progressive left to seek unworkable solutions for complex social problems. Michael Cromartie is right when he calls evangelicals to “maintain clear political convictions on what justice means, without becoming so ideologically wired that they have over-

⁹² Thieliicke, *Theological Ethics*, 2:488.

⁹³ Thieliicke, *Theological Ethics*, 2:488.

⁹⁴ Michael Cromartie, “The Dead Are Not Raised by Politics,” Patheos, August 11, 2010, <https://www.patheos.com/resources/additional-resources/2010/08/dead-are-not-raised-by-politics>.

expectations for what can happen in public policy . . . having that cast of mine can help nurture a form of Christian civility that is really important in these times, when we have a culture that is shriller than ever.”⁹⁵ Consequently, pro-life evangelicals are not inconsistent in seeking restrictive abortion laws. But when all aspects of civil justice are taken into consideration, it does not seem that abortion laws necessarily require criminal persecution. Pro-life evangelicals who recognize the normative but not necessary nature of civil law are freed to stridently argue for unborn life while compassionately caring for those who have violated those laws.

⁹⁵ Cormartie, “The Dead Are Not Raised by Politics.”

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