

# God's Law for Modern Man

## Chapter 6: The Old Testament Penalties

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Once a person is convinced that the moral case laws within the judicial law are still binding he often will ask: what about the penalties? Should modern nations follow the Old Testament penal system? It is the Old Testament *penalties* that cause the most vocal opposition to Theonomy. One even hears Christians describe the penalties given in the law as cruel, harsh and barbaric. The idea that God who is perfectly holy, righteous and just could write penalties that are cruel, unfair or barbaric is totally unscriptural. There are Reformed Christians who (following Calvin) argue that the moral law (i.e., the Ten Commandments) has abiding validity for modern nations but the penalties (except for murder) do not have abiding validity.<sup>1</sup> The modern civil magistrate (according to this view) is not obligated to follow the penalties set forth in God's law. A ruler can make the penalties more severe or more lenient as he deems necessary for his own societal situation. Al Hembd writes, "Thus the magistrate may find in his particular nation that it is necessary to punish some offenses more severely than the Judicial Law would. At other times or in other places the magistrate may find himself compelled to punish more leniently than would the Judicial Law. Calvin does allow for either. In some nations, adultery was punished more leniently than the Judicial Law punished it. In other nations robbery was punished by exacting two-fold of that which was taken, which is a more lenient punishment than that of the Judicial Law. Yet in other nations, where robbery and slaughter are pandemic, it may become necessary to punish both with immediate death".<sup>2</sup> This view regards the penalties given in the law as positivistic.<sup>3</sup> The moral law reflects God's nature and character and, therefore, is

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<sup>1</sup> An example of this view is given in an essay by Al Hembd. Hembd writes, "The penalties for infractions against the Moral Law can and may be adapted to the specific situations of a given culture. The Judicial Law given to Israel is just such an adaptation, given by Jehovah God of Israel to address its specific culture. Specific penalties for infractions of the Moral Law can be adapted to a specific culture. The Judicial Law addressed the state of Israel as it existed *at that time*. Of course, due consideration must be given by the present-day magistrate to the penalties assigned in the Judicial Law. The Judicial Law was a law given by the All-wise God, and it could well be argued that, in some instances at least, some of the punishments have an abiding permanence. The death penalty for murder would be one example, since that particular penalty was given prior to and apart from the Judicial Law of Israel. Yet however one might change the penalties of the Judicial Law, one *cannot* change the Moral Law without changing the very standard of right and wrong *by that act*" ("Josiah, Erastianism, and National Covenanting, Part Two" in *The Blue Banner*, Vol. 6, Issue 3, [Rowlett, TX: First Presbyterian Church, Rowlett, TX, July/Sept., 1997], p. 2). Hembd does a fine job of exegeting Calvin, but offers no scriptural proof for his assertions.

<sup>2</sup> Al Hembd, "Josiah, Erastianism, and National Covenanting, Part Two" in *The Blue Banner* Vol. 1, Issue 3, (Rowlett, TX: First Presbyterian Church, Rowlett, TX, July/Sept., 1997), p. 4.

<sup>3</sup> Positive law refers to those commands of God which are grounded solely on the fact that God says that man must obey them. An example of a positive law is the command to Adam and Eve not to eat of the tree of the knowledge of good and evil (Gen. 2:17). There was nothing intrinsically evil regarding the forbidden fruit; it was wrong *solely* because God said it was wrong. How Calvin and certain Paleopresbyterians can regard the penalties as positivistic when they are obviously related to the seriousness of the various crimes is beyond my comprehension. If they want to argue that certain penalties are positivistic and others are not then tell us what is and what is not positivistic and explain why. After reading the relevant portions of Calvin's *Institutes* and listening to the arguments of certain Paleopresbyterians it appears that some people accept what Calvin says simply because Calvin said it.

binding on civil magistrates but the penalties are not binding; they argue if a civil magistrate desires, adulterers, homosexuals and people who commit bestiality could be fined fifty dollars and sent home while a thief convicted for a first offense (stealing a car) could be executed.

The view that the penalties set forth in God's word are not binding and that civil magistrates are free to make up their own penalties is unscriptural for a number of reasons. First, God says that the law *including the penalties* cuts across all social and cultural distinctions. The Gentile who resided in Israel was not required to keep the ceremonial law yet was bound by the Judicial law and its penalties. "You shall have the same law for the stranger and for one from your own country" (Lev. 24:22).

Second, Jehovah has made it very clear that Israel's justice system (including the penalties) was to be the model for all nations. Why? Because nothing devised by sinful man (i.e., as a complete body of law) is as righteous and just as what God has revealed in His word: "this is your wisdom and your understanding in the sight of the peoples, who shall hear all these statutes, and say, 'Surely this great nation is a wise and understanding people.'... And what great nation is there that has such statutes and righteous judgments as are in all this law which I set before you this day" (Deut. 4:6, 8). "[N]o other nation possesses a body of law in itself so *righteous*, i.e., so conformable to the requirements of justice and right, and consequently so adapted to command the admiration of mankind at large, as Israel has."<sup>4</sup> The words "statutes and judgments" are often used together in Deuteronomy. "Although the two terms are in Deuteronomy indistinguishable and used comprehensively for the whole law...they originally had different connotations. The effect of Deuteronomy's generalizing of the terms for law so that they are practically synonymous is to bring civil and criminal law into the general context of religious instruction and teaching."<sup>5</sup> John Gill writes regarding verse 8: "Founded in justice and equity, and so agreeable to right reason, and so well calculated and adapted to lead persons in the ways of righteousness and truth, and keep them from doing any injury to each other's personal property, and to maintain good order, peace, and concord among them: *as all this law which I set before you this day?* which he then repeated, afresh declared, explained and instructed them in; for otherwise it had been delivered to them near 40 years ago. Now there was not any nation then in being, nor any since, to be compared with the nation of the Jews, for the wise and wholesome laws given unto them; no, not the more cultivated and civilized nations, as the Grecians and Romans, who had the advantage of such wise lawgivers as they were accounted, as Solon, Lycurgus, Numa, and others; and indeed the best laws that they had seem to be borrowed from the Jews."<sup>6</sup>

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<sup>4</sup> S. R. Driver, *Deuteronomy* (Edinburgh: T. & T. Clark, 1986 [1895]), p. 65.

<sup>5</sup> A. D. H. Mayes, *Deuteronomy* (Grand Rapids, MI: Eerdmans, 1979), p. 149. Matthew Henry says of verse 8, "Observe, First, that all these statutes and judgments of the divine law are infinitely just and righteous, above the statutes and judgements of any of the nations. The law of God is far more excellent than the judgments of any of the nations. No law so consonant to natural equity and the unprejudiced dictates of right reason, so consistent with itself in all the parts of it, and so conducive to the welfare and interest of mankind, as the scripture-law is, Ps. cxix. 128. *Secondly*, The having of these statutes and judgments set before them is the true and transcendent greatness of any nation or people. See Ps. cxlvii. 19, 20. It is an honour to us that we have the Bible in reputation and power among us. It is an evidence of a peoples' being high in the favour of God, and a means of making them high among the nations. Those that magnify the law shall be magnified by it," (*Commentary on the Whole Bible*, 1:744; see also Matthew Poole, *A Commentary on the Holy Bible* [Carlisle, PA: The Banner of Truth Trust, 1963 (1685)], 1:345; and Keil and Delitzsch, *Commentary on the Old Testament* [Grand Rapids, MI: Eerdmans, 1981], 1:310).

<sup>6</sup> John Gill, *An Exposition of the Old Testament*, (Streamwood, IL: Primitive Baptist Library, 1979 [1810], 2:18). Moshe Weinfeld says of verse 8, 'The Mesopotamian kings boasted that by their profound wisdom they established "just laws (*dinat misarim*)"; cf. the Code of Hammurabi 4:9-10; 24:1-5, 26-31. Is it not possible that by using the

Third, the idea that the penalties are positivistic and nonbinding on civil magistrates ignores the explicit teaching of Scripture, that the penalties are indeed expressions of justice. They are not arbitrary. The Bible teaches the judicial principle known as the *lex talionis* (the law of retaliation). This principle is stated in Exodus 21:23-25; “But if any lasting harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe” (cf. Lev 24:18ff.; Deut. 29:21). The whole point of the *lex talionis* is that the punishment “must fit the crime; it must be proportionate to the offense, neither lesser nor greater.”<sup>7</sup> “Where physical damage can be determined objectively, the criminal must pay on an ‘eye for eye’ basis.... The punishment must fit the magnitude of the violation; the violation is assessed in terms of the damages inflicted.”<sup>8</sup>

There is disagreement among scholars as to whether the *lex talionis* was meant by God to be enforced literally (e.g., amputation of a limb). The context permits the substitution of a non-literal penalty (cf. Ex. 21:26-27) at least in some instances. There are crimes in which God permits no substitution, such as first and second degree murder (cf. Num. 35:31). Jewish Midrash and Jewish medieval scholars such as Nachmanides (thirteenth century) taught that the *lex talionis* referred to a just monetary recompense to a victim for a damaged eye or limb. Some scholars regard the amputation of a limb for a victim’s limb as referring to the *maximum* penalty allowed. However, the victim, not the state is the one who decides whether or not to accept monetary compensation. (This debate is beyond the purview of this essay.) Although scholars may disagree on exactly how the *lex talionis* is to be enforced, the meaning of the *lex talionis* cannot be denied. The Bible teaches that penalties must be just; and it is God’s law that defines justice. Justice is not relative. It is not affected or changed by time, culture or social considerations. To argue that it is *equally* just to execute a person for theft in one country while in another country a thief should only pay restitution is to argue a blatant contradiction. Bahnsen writes,

The main underlying principle of penology (whether civic or eternal) is not reformation or deterrence, but *justice*. The outstanding characteristic of theonomic punishment is the principle of *equity*; no crime receives a penalty which it does not warrant. The punishment for a violation of God’s law is always appropriate for the nature of the offense; ‘an eye for an eye, and a tooth for a tooth.’ Here is the most blessed standard of *social* retribution that man’s civilization has ever seen. That the Old Testament laws set forth humane and just punishments for crimes is immediately apparent when one compares it with the legal codes of the nations around Israel. God’s penal sanctions are not overweighted, cruel, unusual, or excessive; a criminal receives what he deserves: no more, no less.... None of God’s penalties are excessive or lenient; hence the Older Testament does not detail *arbitrary* punishments for crimes...but the punishment was made to correspond to the social heinousness of the offense so that the culprit receives what his public disobedience merits (e.g., Deut. 19:19).<sup>9</sup>

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exceptional expression ‘just laws (*mispatim saddiqim*)’ the author of Deuteronomy employs a polemical note against the Hammurabi Code? This code was well known and copied in the schools of the ancient Near East for a thousand years. Thus, in opposition to ‘the wise’ Babylonian king who established as it were, ‘just laws,’ Deuteronomy takes pride in the ‘just laws’ observed by ‘the wise’ and discerning people of Israel” (*Deuteronomy* [New York, NY: Doubleday, 1991], p. 202).

<sup>7</sup> R. J. Rushdoony, *The Institutes of Biblical Law*, p. 229.

<sup>8</sup> Gary North, *Victim’s Rights: The Biblical View of Civil Justice* (Tyler, TX: Institute for Christian Economics, 1990), p 99.

<sup>9</sup> Bahnsen, *Theonomy*, pp. 437-438.

God's law restricts the state's authority to impose vengeance "[B]iblical law restrains the officers of the State by imposing strict limitations on their enforcement of law. It is God's law that must be enforced, and this law establishes criteria of evidence and a standard of justice. This standard is 'an eye for an eye'. A popular slogan in the modern world permits a parallel judicial principle: 'the punishment should fit the crime....' Biblical law restrains the arbitrariness of the State's officers. If the punishment must fit the crime, then the judges do not have the authority to impose lighter judgments or heavier judgments on the criminal".<sup>10</sup> The idea that the State can lawfully determine its own penalties apart from God's word is an implicit denial of the justness of the Bible's Spirit inspired penalties. It is judicial relativism and statism. Justice is objective. God revealed to Israel a just justice system so that arbitrary and unjust penalties would not be inflicted upon people as was commonly done in the surrounding pagan nations. "[C]an the state be God's servant and by-pass God's law? And if the state 'must exercise justice', how is justice defined, by the nations, or by God?... Neither positive law nor natural law can reflect more than the sin and apostasy of man: *revealed law* is the need and privilege of Christian society."<sup>11</sup>

The fact that the judges and officers in Israel are commanded to judge "the people with just judgment" presupposes an objective standard of justice. "You shall appoint judges and officers in all your gates, which the LORD your God gives you, according to your tribes and they shall judge the people with just judgment. You shall not pervert justice; you shall not show partiality, nor take a bribe, for a bribe blinds the eyes of the wise and twists the words of the righteous. You shall follow what is altogether just, that you may live and inherit the land the LORD your God is giving you" (Deut. 16:18-20). Craigie writes,

Both the people and the officers of law were to *pursue justice, and justice alone*, rather than pervert justice (v. 19). The pursuit of *justice alone* provided a basis for the execution of the law that was not merely human, whereas perverting justice reduced the execution of the law to a human basis in which unjust criteria became operative. Justice, the principle underlying the law, was not man-made or conceived, but found its source and authority in God. Hence justice was the only sure and authoritative basis for law. The pursuit of justice and the execution of the law in justice could alone lead to prosperity, namely, life and the possession of the promised land (v. 20b).<sup>12</sup>

In modern society most secular humanists would agree that murder, rape, and bestiality are immoral activities. But, when secular humanists discuss the civil penalties for such activities they usually deny biblical justice. The penalty rarely fits the crime. Even most unbelievers acknowledge that the American justice system often dispenses injustice. One reads of child molesters and rapists who spend six months in jail and murderers being paroled after seven years, etc. Those who argue that the moral law is binding while the penalties are positivistic cannot consistently make a case against the judicial atrocities being committed in most countries today. If as Hembd asserts the state can lawfully execute a thief if it deems it necessary for the greater good of society then the state can execute anyone for any crime. The Bible condemns such thinking. Civil magistrates are to render "true justice" or literally "righteous judgment" (*mispat sēdeq*). "Justice does not follow man's needs, but man follows justice. Justice is God-

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<sup>10</sup> Ibid, pp. 254, 257.

<sup>11</sup> R. J. Rushdoony, *The Institutes of Biblical Law*, p. 10.

<sup>12</sup> P. C. Craigie, *The Book of Deuteronomy* (Grand Rapids, MI: Eerdmans, 1976), p. 248.

centered, not man-centered. Modern law is not in touch with reality, because it seeks to be man-centered and defines the Rule of Law in terms of man and the will of man.”<sup>13</sup>

Biblical justice is not the opinion of the civil magistrate but is the application of God’s righteousness to specific acts. Biblical justice is individualistic in the sense that (contrary to Hembd’s assertion) social circumstances are irrelevant in determining the penalty. Murder, kidnapping, rape, and theft are just as evil and offensive to God in 1<sup>st</sup> century Palestine as in 18<sup>th</sup> century England or 20<sup>th</sup> century Brazil. The vengeance of God toward these crimes is the same. The justness or righteousness of the penalty also remains the same. “The Bible knows only one kind of justice or righteousness, God’s justice as set forth in His law. Thus, whether justice or righteousness in Scripture is ascribed to God, or to man and man’s dealings, the reference is to the same fact. Man is righteous when he is in obedience to God’s law.”<sup>14</sup>

Those who argue that God’s penalties against crime are positivistic have not only contradicted Scripture but also right reason. They are simply following Calvin’s irrational notions regarding natural law. Calvin wrote, “It is a fact that the law of God which we call the moral law is nothing else than a testimony of natural law and of that conscience which God has engraved upon the minds of men. Consequently, the entire scheme of this equity of which we are now speaking has been prescribed in it. Hence, this equity alone must be the goal and rule and limit of all laws. What ever laws shall be framed to that rule, directed to that goal, bound by that limit, *there is no reason why we should disapprove of them, however they may differ from the Jewish laws, or among themselves.*”<sup>15</sup> Calvin argues that natural law testifies to the moral law; that nations who depend on natural law and equity to determine penalties can have just laws that *differ* from the Old Testament legislation and each other. Calvin then proceeds to give examples of different punishments for the same offences. According to Calvin one country may execute thieves, another may whip them and another fine them and yet they are all still following the same natural law and equity. This assertion is utter nonsense. Calvin apparently believes that justice is served as long as a criminal is punished in some manner for a crime. Yet, the amount of punishment is irrelevant to the question of justice. Calvin jettisons the whole judicial law of Moses with no scriptural argumentation and then asserts that magistrates can arbitrarily determine penalties. If as Scripture teaches, the penalty must fit the crime, then Calvin’s view must be rejected. It is simply irrational to assert that executing an adulterer and fining an adulterer fifty dollars are both just. Either one is too harsh or one is too lenient.<sup>16</sup> “The *lex talionis* should not be dismissed as some sort of peculiar judicial testament of a long-defunct primitive agricultural society. What the Bible spells out as judicially binding is vastly superior to anything offered by modern humanism in the name of civic justice.”<sup>17</sup>

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<sup>13</sup> R. J. Rushdoony, *Law and Society* (Vallecito, CA: Ross House, 1982), p. 521.

<sup>14</sup> *Ibid.*, p. 585.

<sup>15</sup> John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeil, trans. Ford Lewis Battles (Philadelphia, PA: Westminster, 1960), IV. XX. 16, 2:1504, *emphasis added*.

<sup>16</sup> “The Israelites expected God’s justice to be fair because it issued from God who was a righteous Judge (Ps. 7:11, 9:8, 119:137, 145:17). Those who were appointed to the office of judge (*dayyan* or *sopet*) or magistrate were expected to reflect God’s holy nature (Ex. 18:21). Consequently, when executing justice, the judges (*sopetim*) were to be absolutely fair, realizing that they were acting as agents or deputies of the Holy God (Deut. 1:16-17; cf. Ex. 18:21-23)” (Temba L. J. Mafico, “*Just, Justice*” in *Anchor Bible Dictionary*, ed. David N. Freedman [New York, NY: Doubleday, 1992] 3:1128).

<sup>17</sup> Gary North, *Victim’s Rights*, p. 135. “A system of just restitution would eliminate taxpayer support of criminals, rid society of a major breeding and training ground for criminals, and justly reimburse crime victims” (Kenneth L. Gentry, Jr., *God’s Law in the Modern World* [Phillipsburg, NJ: Presbyterian and Reformed, 1993], pp. 62-63).

One of the great lessons of human history is that civil magistrates cannot be trusted to make just penalties for crimes. Throughout history the penalties have either been much too harsh (e.g., a thief being cut open and having his intestines set on fire, etc.) or much too lenient (e.g., six months in jail for rape and battery). Even Christian magistrates were often guilty of imposing arbitrary unjust penalties. If the penalties are positivistic then how are we supposed to determine which penalties in a given country are too harsh or too lenient. How can citizens complain against the unjust penalties of a tyrant if penalties are positivistic? A common argument against the abiding validity of the penal sanctions is that the penalties given to Israel were designed only for their specific society and culture and therefore are not binding on other nations. Those Christians who use this argument need to explain how cultural and social conditions affect or alter the proper penalty for rape, theft, manslaughter, fraud, incest, adultery, fornication, etc. Why should a rapist be treated differently in Polynesia than in Sweden? Does the climate, language, dress, food or means of earning a living make rape somehow less reprehensible? Is adultery less evil in a industrialized nation than in an agricultural society? Is bestiality less or more of a crime in a nation of sheep herders than in a high tech society? It is obvious that specific evil acts that are defined as crimes in the Bible are not rendered less evil because of culture. Furthermore, God teaches how evil He regards particular crimes by the severity of the penalty that He attaches to them. The Bible says that the magistrate is “an avenger to execute wrath on him who practices evil” (Rom. 13:4). The wrath spoken of does not refer to the ruler’s wrath but God’s. “[T]he magistrate is the avenger in executing the judgment that accrues to the evil doer from the wrath of God.”<sup>18</sup>

The only reliable method for determining the proper wrath or penal sanction that God desires for a particular crime is to examine the Spirit inspired penalties in God’s law. Those who reject the penal sanctions have abandoned biblical justice for penal relativism. They have replaced God’s wrath for the wrath of an earthly ruler. Those writers who consider the idea that civil magistrates should impose the penal sanctions in God’s law as heretical and dangerous need to explain how a *penalty instituted by God* is dangerous or unjust. If a change in time, climate, clothing, methods of industry etc., renders a past just penalty to now be unjust then explain how and why; give examples. Christians who argue that natural law or general revelation must be the sole guide for nations must explain how general and special revelation can contradict one another. A return to the biblical system of penal justice is the *only* way to avoid the tyranny of the state and the tyranny of criminals. When Christians abandon what God has said regarding justice and teach that sinful men can determine justice autonomously, they implicitly hand society over to injustice and oppression.<sup>19</sup>

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<sup>18</sup> John Murray, *The Epistle to the Romans*, 2:153.

<sup>19</sup> John Calvin’s views regarding the Mosaic penalties leads to *immediate injustice* regarding civil penalties. Rutherford held the same unscriptural view: “No man but sees the punishment of theft is of common moral equity, and obligeth all nations, but the manner or degree of punishment is more positive: as to punish theft by restoring four oxen for the stealing of one ox, doth not so oblige all nations, but some other bodily punishment, as whipping, may be used against thieves” (*A Free Disputation Against Pretended Liberty of Conscience*, [(London: R. I. for Andrew Cook, 1649), p. 299]). According to Calvin, Rutherford and others, whipping can replace restitution as a just penal sanction against theft. But, replacing biblical restitution with whipping is a *denial* of biblical justice. A central aspect of biblical penology is restitution and victim’s rights. Calvin’s view is totally compatible with the penal system of Western nations in which victims do *not* receive restitution and are *not* permitted to impose the maximum biblical penalty allowed.

## John 8:1-11

A portion of Scripture that is often used as a proof text against the abiding validity of the Mosaic penalties is John 8:1-11 (the woman taken in adultery). A brief examination of this section in John will prove that when Christ dealt with the adulterous woman He was not setting aside the mosaic penalties as a whole or even in part.

Before enumerating the reasons why the anti-Theonomist interpretation of this passage must be rejected one should first note the unsavory circumstances in which the question “What do you say?” was asked.

First, note that the scribes and Pharisees were not at all concerned for the law of Moses but merely were seeking a way to entrap Jesus. The Bible says that they caught the woman in adultery, in the very act (8:4). The act of adultery involves at a minimum two individuals. Yet the Jews brought the woman to Jesus and permitted the man to escape. The law specifically says in Leviticus 20:10 and Deuteronomy 22:22 that the man as well as the woman must be put to death. The witnesses of such a crime do not have the biblical option of prosecuting only one of the guilty parties. “Since the woman was taken in the very act there should have been two sinners, not one, before Jesus.”<sup>20</sup> The fact that the woman was caught “in the very act” indicates the strong probability that either the adulterous situation was brought about by a premeditated plan on the part of the Jews, or that the Jews took advantage of a well-known adulterous relationship which they ignored in the past but now decided to use solely for the purpose of trapping Christ. If Jesus had permitted the Jews to execute the adulterous woman He would have been guilty of violating not only Leviticus 20:10 and Deuteronomy 22:22, but also Exodus 23:1, “Do not put your hand with the wicked to be an unrighteous witness.”

Second, in order to properly interpret Jesus’ answer to the scribes and Pharisees one must understand the nature of the trap which they set before Jesus. The Jews’ question was carefully designed so that Jesus would be forced either to contradict the law of Rome or the law of Moses. Because the Jewish nation was under the authority of Rome the Jewish magistrates did not have the authority to impose the death penalty.<sup>21</sup> “The Jews said to him [Pilate], ‘It is not lawful for us to put anyone to death’” (Jn. 18:31). If Jesus had told the crowd to stone the woman and she was killed by the mob, then Jesus could have been arrested by the Roman authorities for violating their law. If Christ told the people not to stone her, then the Jews could accuse Jesus of annulling the law of Moses. They could present Christ to the people as an enemy of the Mosaic law “and as one that usurped an authority to correct and control it, and would confirm that prejudice against him which his enemies were so industrious to propagate, that he came to *destroy the law and the prophets*.”<sup>22</sup> Godet concurs, “If Jesus answered: ‘Moses is right; stone her!’ they would have gone to Pilate and accused Jesus of infringing upon the rights of the Roman authority, which had

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<sup>20</sup> Leon Morris, *The Gospel According to John* (Grand Rapids, MI: Eerdmans, 1971), p. 885.

<sup>21</sup> If the scribes and Pharisees really wanted have the adulterous woman executed they could have sought a conviction by the Sanhedrin. The Sanhedrin would then have had to send representatives to Pilate to argue that her crime merited a Roman execution. The Jews knew that an appeal to Pilate for an execution would have failed for a number of reasons. First, at that time adultery was not a death-penalty offense according to Roman law. Second, the Jews themselves had not sought the death penalty for adultery for several decades. They had substituted divorce for adultery. Because of their situation under Roman rule they had no other choice. Third, the circumstances surrounding the woman’s arrest were unsavory and possibly involved illegal entrapment. Pilate would not have viewed the Jew’s case favorably.

<sup>22</sup> Matthew Henry, *Commentary on the Whole Bible*, 5:981.

reserved to itself the *jus gladii* here, as in all conquered countries. If He answered: ‘Do not stone her!’ they would have decried Him before the people and would even have accused Him before the Sanhedrin as a false Messiah; for the Messiah must maintain or restore the sovereignty of the law.”<sup>23</sup>

Jesus, in order to avoid the trap set for Him by the Jews, had to answer in such a manner that honored the law of Moses yet did not permit the mob to kill the woman (Jesus’ answer also implicitly dealt with the unsavory circumstances surrounding her capture). “So when they continued asking Him, He raised Himself up and said to them, ‘He who is without sin among you, let him throw a stone at her first’” (v. 7). “This solemn and weighty sentence is a striking example of our Lord’s perfect wisdom.”<sup>24</sup> William Hendriksen writes, “He did not make light of her sin. Neither did he expressly or by implication abolish the seventh commandment. He did not even in so many words set aside the law which demanded the death-penalty for offenses such as these. On the contrary, without in any way implying that he personally desired her death, he proceeded upon their *presumed assumption*, as if the law of Moses were to be literally applied in this given case—which even they themselves, of course, did not *really* want—; but then he showed them that they were not fit to execute the very law which *ostensibly* they were so eager to carry out!”<sup>25</sup>

Having examined the circumstances surrounding this case we will proceed to prove that Christ did not relax or abolish the Mosaic penalties in His answer. First, note that Jesus’ answer upheld the Mosaic penalty. He specifically said, “[T]hrow a stone” (v. 7). But, because of the unbiblical nature of the case before Him (the man was set free and the woman was likely entrapped), and, the situation with Rome (it would have been a civil crime to kill her), He set a condition upon this group of evil witnesses that He knew they could not meet. “The skill of this answer consists in disarming the improvised judges of this woman, without however infringing in the least upon the ordinance of Moses. On one side, the words: *let him cast the stone*, sustain the code, but on the other, the words: *without sin*, disarm any one who would desire to apply it.”<sup>26</sup> Those who argue that Jesus was abolishing the Mosaic penalties in this passage should consider the fact that if Christ was making a universal pronouncement against the Mosaic penalties He would be a total anarchist, for if sinless perfection is required to impose a civil penalty no one could be penalized for any crime. Only Jesus Christ is without sin and He is now in heaven. Furthermore, if Christ was setting aside the Mosaic penalties why then did He rebuke the Pharisees for circumventing the law which required the execution of a rebellious son (cf. Mt. 15:3-6; Deut. 21:18-20; Ex. 21:15)?

Second, Jesus did not come to earth to serve as a civil judge. As in the matter of contested estate (Lu. 12:13-14) Jesus refused “to have the office of judge thrust upon Him.”<sup>27</sup> Jesus spoke to the woman not as an earthly judge but as the divine-human Messiah. Furthermore, even if Christ had been speaking as a civil judge He could not have had the woman executed for the

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<sup>23</sup> Frederic Louis Godet, *Commentary on John’s Gospel*, (Grand Rapids, MI: Kregel, 1978 [1886]), p. 647.

<sup>24</sup> J. C. Ryle, *Expository Thoughts on the Gospels*, (Cambridge: James Clark & Co, 1976 [1869]), 2:80.

<sup>25</sup> William Hendriksen, *The Gospel of John*, (Grand Rapids, MI: Baker, 1953), 2:38.

<sup>26</sup> Frederic Louis Godet, *Commentary on John’s Gospel*, pp. 648-649. A number of commentators (Matthew Henry, Alfred Plummer, J. C. Ryle, Matthew Poole, George Hutcheson) argue that the phrase, “he who is without sin” refers not to all sin but particularly to the sin of adultery. If this interpretation is true, Jesus would in effect be saying, “can you convict this woman without also convicting yourselves?” Whether Jesus is referring to all sin or to the particular sin of adultery does not affect the arguments set forth in this section against the anti-Theonomic interpretation.

<sup>27</sup> Alfred Plummer, *The Gospel According to St. John* (Grand Rapids, MI: Baker, 1981 [1882]), p. 185.

hypocritical witnesses had all vanished. Calvin concurs, “He said this according to the custom of the Law; for God commanded that the witnesses should with their own hands, put malefactors to death, according to the sentence which had been pronounced on them; that greater caution might be used in bearing testimony (Deut. xvii. 7).”<sup>28</sup> Also, note that Christ was not speaking to a lawfully assembled court but to a mob. “He is contending not against punishment being inflicted by human law [i.e., lawful courts], but against men taking the law into their own hands.”<sup>29</sup>

Third, Jesus Christ is God and has the authority to forgive sin and remit penalties that earthly judges do not possess. In Numbers 35:31 the law explicitly says that persons guilty of murder must be put to death. No ransom is ever to be accepted for the life of a murderer. Yet, in 2 Samuel 12:13 God forgives King David for adultery and premeditated murder and also remits the civil penalty.<sup>30</sup> Does 2 Samuel 12:13 teach that God has eliminated the civil penalties of the Mosaic law? No, of course not! Thus, there is no reason to believe that Christ has altered the penalties by not condemning the adulterous woman. Furthermore, the idea that Christ was abolishing the judicial penalties in John 8:1-11 is contradicted by the passages which teach that a change in the law occurred with Christ’s sacrificial death (cf. Eph. 2:14-16; Heb. 7:26-9:15). Thus the argument that Jesus is abolishing the Mosaic penalties in this portion of Scripture is both poor exegesis and chronologically premature.

## Has the New Testament Substituted Divorce for the Death Penalty?

Those who are against the continuance of the Mosaic penalties not only use the case of the woman taken in adultery but also point to other passages which indicate that death was not required for the offense of adultery. One such passage is Matthew 1:19, “Then Joseph, her husband, being a just man, and not wanting to make her a public example, was minded to put her away secretly.” It is important to note that this passage does not shed light upon a *supposed* different system of law for the New covenant era, for it refers to the time before Jesus Christ was even born. What it does do is help us understand the Old Testament law.

Joseph and Mary were betrothed. Among the Jews betrothal was considered much more serious than our modern engagements. The Old Testament law places having sex with “a virgin betrothed to a husband” in the same category as adultery. It is a death-penalty offense (cf.

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<sup>28</sup> John Calvin, *Commentary on the Gospel According to John* (Grand Rapids, MI: Baker, 1981), 1:320.

<sup>29</sup> Alfred Plummer, *The Gospel According to St. John*, p. 185. Robert L. Dabney said of this passage: “The law of Moses, therefore, very properly made adultery a capital crime; nor does our Saviour...repeal that statute, or disallow its justice”; modern legislation which ignores the Mosaic stipulation is “drawn rather from the grossness of Pagan sources” (*Lectures in Systematic Theology*, [Grand Rapids, MI: Zondervan, 1972 (1872)], p. 407).

<sup>30</sup> There is actually no evidence within the passage that the woman repented or that Christ forgave her sins. She does refer to Christ as Lord (*kurie*), but this could just be a polite form of address meaning *sir*. Christ did not condemn the woman because of the reasons given above. Calvin writes, “We are not told that Christ absolutely acquitted the woman, but that he allowed her to go at liberty. Nor is this wonderful, for he did not wish to undertake anything that did not belong to his office, He had been sent by the Father to gather *the lost sheep*, (Matth. x. 6) and, therefore, mindful of His calling, He exhorts the woman to repentance, and comforts her with a promise of grace. They who infer from this that adultery ought not to be punished with death, must, for the same reason, admit that inheritances ought not to be divided, because Christ refused to arbitrate in that matter between two brothers, (Luke xii. 13). Indeed, there will be no crime whatever that shall not be exempted from the penalties of the law, if adultery be not punished; for then the door will be thrown open for any kind of treachery, and for poisoning, and murder, and robbery” (*Commentary on the Gospel According to John*, 1:323). “Bengel remarks that Jesus does not say: ‘Go in *peace*: thy sins are forgiven thee.’ For the sinful woman who is in question here did not come to Jesus by reason of a movement of repentance and faith” (Godet, *Commentary on John’s Gospel*, p. 649).

Deuteronomy 22:23-24). “According to Philo and Maimonides, a betrothed woman possessed all the rights of a wife, and could only be repudiated with the same formalities.”<sup>31</sup> On the one hand God’s law says specifically that the penalty for adultery is death and on the other hand the Bible calls Joseph a just man even though he decides not to prosecute Mary in civil court but “to put her away privately;” that is, without the public spectacle of a trial at the gate. (Keep in mind that Joseph at this time is an Old Testament saint. There is no question that at this time the Old Testament law had not been abrogated). What does this mean? Does the Bible contradict itself?

This passage indicates that the victim of a crime (i.e., at least *certain* crimes of a private nature) does not have to take full advantage of the law against the guilty party. Joseph who loved Mary and knew of her past righteous conduct had the biblical right to extend mercy to her. Because Joseph loved justice he did condemn the crime of which he thought she was guilty (i.e., he did plan to put her away);<sup>32</sup> but, because he loved her he refused to press charges in the civil court. James Morison writes, “While the law invested a man who had entered into an engagement of betrothal with power to visit his unfaithful spouse with the severest penalties (Deut. xxii. 23-27), yet of course it did not constrain him to avail himself of his power. If he felt that he could be satisfied without a public prosecution and judicial conviction and execution, then as a private member of society he had an unchallengeable *right* to dispense with his *rights*. Private members of society are not bound always to exact, though they are bound always to discharge, all their dues. There would probably be something so pure, and sweet, and elevated in the character of Mary, that Joseph, even under the influence of irritation and the deepest disappointment, would feel himself unable to entertain the idea of proceeding against her to the utmost extremity of the law.”<sup>33</sup> Joseph could repudiate Mary as prescribed in the Mosaic law (cf. Deut. 24:1) by giving her a bill of divorcement and sending her out.<sup>34</sup> Even if Joseph had proceeded against Mary judicially before the elders it would not have resulted in the death penalty for the Jews by their accretions to the law had eliminated that possibility. Note, the passage says he wanted to protect her from public shame. Execution is not even considered as a possibility.

This passage teaches that the *victim* of certain crimes does not have to prosecute his or her case before the civil magistrates but can extend mercy and impose a lighter sentence than that which is permitted by the law. This principle applies to the victim not the civil magistrate. To illustrate this principle consider a typical modern occurrence of a crime. An eleven year old boy steals a bike from a person’s open garage and it comes to the attention of the head of that household. According to this principle the victim can ask for his bike back and request privately that the boy be punished in some manner by his father for the offense. Old Testament law does not demand that the victim have the boy arrested and detained for trial.

A portion of Scripture which some opponents of Theonomy consider to be “the clearest evidence that Jesus was altering even the civil application of the law”<sup>35</sup> is Matthew 5:31-32. “Furthermore it has been said, ‘Whoever divorces his wife, let him give her a certificate of

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<sup>31</sup> Joseph Addison Alexander, *The Gospel According to Matthew* (Grand Rapids, MI: Baker, 1980 [1860]), p. 12.

<sup>32</sup> “As a truly religious Jew, Joseph could not think of consummating his marriage with Mary under the present circumstances” (R. C. H. Lenski, *The Interpretation of St. Matthew’s Gospel* (Minneapolis, MN: Augsburg, 1964 [1943]), p. 43.

<sup>33</sup> James Morison, *A Practical Commentary on the Gospel According to St. Matthew* (Minneapolis, MN: Klock & Klock, 1981 [1884]), pp. 8-9.

<sup>34</sup> “Letters of divorce were both private and legal, needing no publication before a court” (R. C. H. Lenski, *Matthew*, p. 43).

<sup>35</sup> *Theonomy and the Confession of Faith*, 1997, a study conducted by the Free Church of Scotland, n.p.

divorce'. But I say to you that whoever divorces his wife for any reason except sexual immorality causes her to commit adultery; and whoever marries a woman who is divorced commits adultery." The authors of a Free Church of Scotland report against Theonomy wrote, "John Murray (*Divorce*, p. 27) demonstrates that Jesus authoritatively replaced the death penalty for adultery in the Mosaic code with divorce. 'Here then is something novel and it implies that the requirement of death for adultery is abrogated in the economy Jesus Himself inaugurated. Here are accordingly two provisions which our Lord instituted, one negative and the other positive. He abrogated the Mosaic penalty for adultery and he legitimated divorce for adultery.... On the one hand, the abrogation of the death penalty for adultery and the substitution of divorce as the legitimate resort for the innocent husband indicate a relaxative amendment of the penal sanction attached to adultery.'"<sup>36</sup>

There are a number of reasons why this passage (Mt. 5:32) does *not* teach that Christ has replaced the death penalty with divorce. First, if in this verse Christ is setting aside a portion of the Mosaic law and replacing it with new legislation then the sermon on the mount contains a blatant self-contradiction. In Matthew 5:17 Jesus said, "Do not think that I came to destroy the Law or the Prophets. I did not come to destroy but to fulfill." He also said "Whosoever therefore breaks one of the least of these commandments, and teaches men so, shall be called least in the kingdom of heaven. For I say to you, that unless your righteousness exceeds the righteousness of the scribes and Pharisees, you will by no means enter the kingdom of heaven" (vs. 19-20). Then in verses 21 through 48 Christ expounds upon the subject of His upholding and honoring the Law of Moses. Jesus gives six examples in which He contrasts the true meaning of God's law with the perverse interpretations and additions to the law of the scribes and Pharisees. The Lord introduces each new subject with the formula "You have heard that it was said" or "it has been said" and then He introduces His exposition with the phrase, "but I say to you." Remember, Jesus is not correcting the law of Moses but the false interpretation of it by the scribes and Pharisees. D. Martyn Lloyd-Jones writes,

Bearing all this in mind, let us also remember that in these six contrasts which our Lord draws, He is comparing not the law of Moses, as such, with His own teaching, but rather the false interpretation of this law by the Pharisees and scribes. Our Lord obviously does not say that He had come to correct the law of Moses, because it was God's law, given by God Himself to Moses. No, our Lord's purpose was to correct the perversion, the false interpretation of the law which was being taught to the people by the Pharisees and scribes. He is therefore honoring the law of Moses and displaying it in its great fullness and glory. That, of course, is precisely what He does with regard to the question of divorce. He is especially concerned to expose the false teaching of the Pharisees and scribes with regard to this important matter.<sup>37</sup>

Those who argue that this passage teaches that Christ abrogated the death penalty and replaced it with something totally new (i.e., divorce), have Christ saying in the same sermon: "I didn't come to destroy or get rid of the law but to fulfill it. If anyone teaches people not to obey any part of the law he shall be the least in the kingdom of heaven. By the way, I'm now abrogating the death penalty for divorce. I'm now teaching you not to observe this particular law of Moses." If (as the Free Church of Scotland asserts) this was what Christ was teaching would not Christ's enemies have seized the opportunity of accusing Jesus of contradicting the law of Moses? Furthermore, if Jesus was substituting divorce for the death penalty then Matthew 5:32 would contradict John

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<sup>36</sup> Ibid.

<sup>37</sup> D. Martyn Lloyd-Jones, *Studies in the Sermon on the Mount* (Grand Rapids, MI: Eerdmans, 1982 [1959]), 1:253.

8:1-11. John 8:1-11 occurs after the sermon on the mount. Yet in the passage in John's gospel Jesus upholds the death penalty provision.

Second, Christ (in v. 32) did not take issue with the scribes' doctrine regarding the death penalty but rather refuted their lax notion regarding the *grounds* of divorce. Jesus refuted their interpretation of Deuteronomy 24:1.<sup>38</sup> The majority of Jews followed the teaching of Rabbi Hillel who had a very broad understanding of the word "unseemly" or "indecent thing" in Deuteronomy 24:1. They believed that a man could divorce "his wife for any cause whatsoever." If a man's wife put on a little weight, made a bad cup of coffee or burnt the toast she was "unseemly" and could be divorced. Jesus rejected this false interpretation of Deuteronomy 24:1 by giving the correct interpretation. Shearer writes, "Moses and Christ agree that sin only, and the same sin, may justify divorce. Moses says, 'Because he has found some uncleanness in her.' the original may be rendered 'Matter of nakedness.' This is a technical term to indicate some form of lewdness, and there is no reference to ceremonial and ritual uncleanness. It can only mean uncleanness in the marriage relation, sexual sin.... Christ expounded this only 'cause' of Moses to be fornication or adultery—sin in the marriage relation."<sup>39</sup> Since Jesus did not speak to the issue of the civil penalty for adultery but rather gave His interpretation of a specific passage from the Mosaic law, there is absolutely no reason to conclude that He abolished the death penalty unless the passage in question (Deut. 24:1) also abolished the penalty. That of course would be absurd. Remember, Jesus expounded the true meaning of the Mosaic law against the Pharisees and scribes. He did not issue new legislation.

Third, the interpretation that Jesus was implicitly setting aside the death penalty for divorce, by allowing divorce in the case of fornication assumes that the Old Testament law (and the Jewish courts in the days of Christ) always required the death penalty for fornication or adultery. This assumption (by the Free Church of Scotland and others) has no foundation in Scripture at all. Before Jesus was even born Joseph was going to put Mary away privately because he thought she was guilty of fornication. Does the Bible condemn Joseph for not dragging Mary before the authorities to have her executed? No, it says he was a just or righteous man. The victim has the right (in accordance with Deuteronomy 24:1) to divorce his spouse without a civil trial by giving her a certificate of divorce and sending her out of the house. Furthermore, "different circumstances involved in the adultery, its discovery, and its recompense

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<sup>38</sup> "N. B. Stonehouse offers a good paraphrase of the first part of the antitheses in the Sermon on the Mount: 'Ye have heard of the appeal of Jewish teachers to Deuteronomy 24:1 in the interest of substantiating a policy which permits husbands freely at their own pleasure to divorce their wives—simply by providing them with a duly attested document of the transaction'" (John R. W. Stott, *Christian Counter Culture: The Message of the Sermon on the Mount* [Downers Grove, IL: Inter Varsity Press, 1978], p. 97).

<sup>39</sup> J. B. Shearer, *The Sermon on the Mount: A Study*, (Richmond, VA: Presbyterian Committee of Publications, 1906), pp. 63-64. Alfred Plummer writes, "The stricter Rabbis taught that the 'unseemly' things (*impudicum negotium*, Tertullian) which justified divorce (Deut. xxiv. 1) were adultery: and according to Matthew, Christ said the same thing. Nothing short of adultery justified divorce, but adultery did justify it" (*An Exegetical Commentary on the Gospel According to St. Matthew* [Grand Rapids, MI: Baker, 1982 (1915)] pp. 81-82). R. V. G. Tasker writes, "Fornication renders *porneia*, which is a general term for 'unchastity', the word by which RSV here translates it.... [I]t must be supposed that Jesus favoured the interpretation put on Deuteronomy xxiv. 1 by the stricter school of Jewish interpreters" (*The Gospel According to St. Matthew*, [Grand Rapids, MI: 1961], p. 69). Arthur Pink writes, "Here Christ refutes the corrupt interpretation of the scribes and Pharisees, and positively affirms that divorce is permissible only in the case of that sin which in God's sight disannuls the marriage covenant, and even then is only allowed, and not commanded" (*An Exposition of the Sermon on the Mount* [Grand Rapids, MI: Baker, 1982 (1950)], p. 93).

were countenanced by the Old Testament (e.g., Num. 5:11-31). The law did not have one exclusive pattern for handling instances of adultery.”<sup>40</sup>

In each of the six sub-points of this section of Christ’s sermon, Jesus refuted specific abuses of the Old Testament law by the scribes and Pharisees. Were the Jews in Jesus day guilty of abusing the death penalty? Were people being executed unfairly? No. The Jews had abandoned the death penalty for adultery many years before Jesus started His ministry. Because of their subjugation to Rome the Jewish authorities were forbidden to impose the death penalty (cf. Jn. 18:31). Those who argue that Christ was abolishing the death penalty for adultery must ignore the Old Testament teaching regarding the different circumstances and methods of handling unfaithfulness, the historical context in which Jesus sermon was preached (the death penalty for adultery was not an issue) and the fact that Jesus was refuting Jewish perversions of the law not the law itself.

Fourth, Jesus in His earthly ministry came to obey the law. He did not come as a judge (cf. Luke 12:13-14) or a legislator. Shearer writes, “It is necessary here, again, to emphasize the fact that Christ in the flesh was under the law, and was in no sense a lawgiver. James enunciates this same great fact in Chapter iv. 11, 12. He teaches that to judge the law, and to do the law, are incompatible. Christ in the flesh was a doer of the law, and was in no sense a judge or lawgiver. It follows, therefore, that Christ and Moses taught exactly the same thing, if they are rightly interpreted, while the Pharisees made the law void by their traditions; and they had so defiled the land with their vicious divorces that it was nearly ready to vomit them out.”<sup>41</sup> The idea that Christ was abrogating the Mosaic law and giving forth new legislation while He was the humble servant, while He was fulfilling the law in exhaustive detail for His people, is a contradiction of His earthly mission.

Hendriksen summarizes Jesus’ teaching in Matthew 5:31-32 as follows: “The more we study Christ’s teaching as presented to us in this passage the more we begin to appreciate it. Here, by means of a few simple words, Jesus discourages divorce, refutes the rabbinical misinterpretation of the law, reaffirms the law’s true meaning (cf. Mt. 5:17-18), censures the guilty party, defends the innocent, and throughout it all upholds the sacredness and inviolability of the marriage bond as ordained by God!”<sup>42</sup> Those Christians who are seeking scriptural proof that the penal sanctions of the Mosaic law are abrogated cannot find it in Mt. 5:31-32. Pastors and scholars who use this passage as a proof text against the abiding validity of the Mosaic penalties are guilty of letting their anti-Theonomic presuppositions guide their analysis of this text. Such a procedure is commonly referred to as eisegesis.

## The Jesus-Didn’t-Prosecute Argument

Another argument commonly used against the abiding validity of the Mosaic penalties is that if Christ and the apostles believed that the Mosaic penalties were still in force, then, why did

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<sup>40</sup> Greg L. Bahnsen, *Theonomy in Christian Ethics*, pp. 113-114.

<sup>41</sup> J. B. Shearer, *The Sermon on the Mount*, p. 63.

<sup>42</sup> William Hendriksen, *The Gospel of Matthew*, p. 306. “In opposition to this prevalent perversion of a merciful provision in the law, our Savior teaches that so far from making divorce easier, he intended to forbid it altogether as the law did, with the single exception of those cases where the contract had already been annulled by the conduct of one party, i.e., by desertion (1 Cor. 7, 15) or adultery” (Joseph Addison Alexander, *The Gospel According to Matthew* [Grand Rapids, MI: Baker, 1980 (1860)], p. 145). “The Law and the Prophets, by Jesus’ own authority, point to the necessity of absolute purity and must not be trivialized by sophistries which seek to escape that purity” (D. A. Carson, *An Evangelical Exposition of Matthew 5-7* [Grand Rapids, MI: Baker, 1978], p. 46).

they not turn prostitutes and criminals over to the state for prosecution? The authors of the Free Church of Scotland report against Theonomy write, “The fact that he [Jesus] refused to condemn [the adulterous woman (John 8:1-11)], shows that he views the Mosaic penalty as no longer valid. This is completely in line with his general attitude. He mixed with tax-collectors and sinners like the Samaritan woman (John 4) and at no time indicated that they should be dealt with by the civil authorities. He even commended prostitutes (Matthew 21:31, 32) for repenting at the preaching of John the Baptist (under the Mosaic code, prostitution was a capital offense). The Apostle Paul clearly followed the Lord Jesus in this. In 1 Corinthians 5 he does not command execution for the member of their fellowship guilty of incest, but excommunication.”<sup>43</sup>

The argument that Jesus and the apostles were implicitly rejecting the Mosaic penalties by their treatment of sinners in their ministries must be rejected for a number of reasons. First, this whole argument is based on a faulty understanding of the Mosaic law. The law says that a person is to be condemned for *specific acts* on the basis of the testimony of two or more witnesses. The witnesses of the act (if a capital offense) must participate in the execution of the criminal. The Bible does not permit the state to round up suspected homosexuals and prostitutes for execution. There must be eye witnesses to an offense who are willing to testify. The idea that the Old Testament law requires church officers to turn over to the state for execution anyone who in their past committed a capital offense is unscriptural and absurd. In the Old Testament Rahab the harlot repented of her wicked behavior and was received into the Old covenant church. In fact she is an ancestor of Jesus Christ!

Second, those who teach that Christ’s kind treatment of prostitutes and adulterers entails a rejection of the Old Testament penal sanctions have chosen an interpretation that logically leads to the total legalization of adultery, incest (cf. 1 Cor. 5) and prostitution. They like to point out that Christ did not turn prostitutes and adulterers over to be executed, but, it should also be noted that *He did not have them prosecuted in any way*. If Jesus’ actions are to be taken as giving forth new legislation regarding penal matters, then in the New covenant era Christian nations should totally legalize prostitution and adultery. Also, if the church at Corinth was making a statement against the Mosaic penalties by not turning the man guilty of incest over to the Roman authorities then incest should be legalized in Christian countries. It is obvious that Jesus was not altering the Mosaic penalties by His kind treatment of sinners. Such an argument proves too much and therefore is worthless.

Third, (as noted above) Jesus in His earthly ministry did not come to judge or alter the law of Moses but to perfectly obey it. Whenever Christ confronted the scribes and Pharisees He acted as a champion of the law; He upheld the law of Moses and condemned false interpretations and additions to it. If Christ (as many assert) was abrogating certain parts of the law of Moses, His opponents were certainly unaware of it; for if He had, they would have accused Him of such at His trial. Jesus was condemned by the Sanhedrin not for opposing the law of Moses but for claiming to be God (cf. Mt. 26:64-65; Lk 22:70-71).

But, what about 1 Cor. 5:1-7? This occurred after Jesus had ascended. Doesn’t this passage teach that the death penalty has been replaced with excommunication? No, not at all! First, (as noted above) such an argument would lead logically to the legalization of incest. There is no indication that the church had him punished by the state at all (unless one holds to the interpretation that having the man turned over “to Satan for the destruction of the flesh” (v. 5) refers somehow to the death penalty; such an interpretation is unlikely.) Second, the church at Corinth lived in a society in which incest was not a death-penalty offense. This historical

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<sup>43</sup> *Theonomy and the Confession of Faith.*

situation renders the whole argument against the death penalty from 1 Cor. 5 irrelevant. When a church finds itself in a nation which does not follow God's law it must obey God's law to the best of its ability but it cannot take up the sword. That function is the sole prerogative of the civil magistrate. In heathen nations often all that the church can do in such situations is excommunicate the sinning member and work to protect what's left of the family (e.g., if a Theonomic church excommunicated an adulterer in modern America and then attempted to have him prosecuted for adultery by the state, the state officials would do absolutely nothing).

## Other Arguments Considered

There are a number of other arguments against the continuance of the penalties (indeed the whole judicial law) that should be considered. One argument is that Old Testament Israel was a unique redemptive covenantal nation; therefore, it had a special body of judicial laws to preserve its uniqueness; no nation except Old Testament Israel is obligated to follow those laws. It is true that Old Testament Israel was a unique nation ("being: (1) a type of Christ's redemptive kingdom and (2) a holy nation set apart by God's electing love."<sup>44</sup>). However, it does not *necessarily* follow that its judicial laws were not binding on other nations. This argument *assumes, without any scriptural support*, that Israel's uniqueness as a holy nation renders the whole judicial law as non-binding on the Gentile nations. The Bible teaches that Israel was a unique special nation; but, it also teaches that: (1. God's moral and judicial law is a guide for Gentile nations (Deut. 4:6, 8); (2. The Old Testament judicial laws are righteous and just (Deut. 4:8; 16:18; Ex. 21:23-25); therefore, the principles they teach are applicable to all nations and cultures; (3. Unlike the ceremonial laws, the judicial laws were binding on Gentiles dwelling within Israel (Lev. 18:26; 20:2); (4. God destroyed nations and cities that violated those judicial laws (e.g., the Canaanites); (5. The prophets foretold of a time when nations will come to Zion to learn God's law (Isa. 2:2-4); and (6. Jesus said He did not come to abolish the law (Mt. 5:17-19). Bahnsen writes, "The notion that God has a double standard of justice is not only ethical nonsense, it is reprehensible in light of everything the Bible tells us of His character and actions."<sup>45</sup>

Another argument against the judicial law is based on a particular interpretation of Ephesians 2:15. It is argued that this passage teaches that by His death Christ abolished the ceremonial *and the judicial law*. The Free Church of Scotland report against Theonomy says, "Before the coming of Christ the Gentiles were excluded from citizenship in Israel (v. 12). This means that they were not part of the theocratic state of Israel with all its duties as well as its privileges. What excluded them was: 'the law with its commandments and regulations'—that is 'the barrier, the dividing wall of hostility.' It is particularly the law considered as that which made Israel distinctive that is in view. It was not the fact that they had a moral code that made Israel distinctive as a nation—all the nations had the law written on their heart (Rom. 2:14, 15). It was the fact that Israel was a theocratic state government by distinctive civil and ceremonial laws. Circumcision, the food laws, the marriage laws, the ceremonial laws and the judicial laws all excluded the Gentiles from citizenship in the state of Israel. It is the law thus considered that Christ abolished in his flesh."<sup>46</sup>

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<sup>44</sup> Greg L. Bahnsen, *No Other Standard* (Tyler, TX: Institute For Christian Economics, 1991), p. 118.

<sup>45</sup> *Ibid*, pp. 120-121.

<sup>46</sup> *Theonomy and the Confession of Faith*.

Does Ephesians 2:15 teach that Jesus Christ abolished the judicial law of Israel? No, it does not. The standard Protestant interpretation of this passage is that the wall of division refers *solely* to the ceremonial law.<sup>47</sup> Did the civil laws against adultery, murder, homosexuality, etc. keep the Jews and Gentiles apart? Did the judicial laws cause enmity between Jew and Gentile? No, it was the ceremonial laws: circumcision, dietary laws, laws regarding purification and so on. The Gentile sojourner living in Israel was required to keep the civil law but was forbidden to offer sacrifice or partake of the ceremonial rituals. “Since the return from the exile the Jewish religion had become formalistic to a very great extent. Obedience to traditional ordinances was stressed. Now it was this very emphasis on ceremonial stipulations, even those stipulations contained in the law of Moses, that formed the dividing wall between Jews and Gentile.”<sup>48</sup> The ceremonial laws should have been used to teach the Gentile nations about the holiness of God, the Savior to come and the way of salvation, but instead were used as a badge of superiority. The Jews would say, “We, and we alone, are the people, and those others are dogs, they are scarcely

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<sup>47</sup> Out of 15 commentaries checked on Ephesians 2:14-15 *not one* said that this passage refers to the ceremonial *and* the civil laws. Two commentators said the passage refers to the whole law fulfilled as a condition of justification. One commentator said it refers to the law as a condition of justification and the ceremonial types. Twelve commentators said it referred to the ceremonial law. The interpretation that this passage refers to the ceremonial *and* civil laws of Israel is indeed very rare. Some notable commentators who regard this verse as referring to the ceremonial law are as follows: John Calvin wrote, “Ceremonial observations were afterwards added, which, like walls, enclosed the inheritance of God, preventing it from being open to all or mixed with other possessions, and thus excluded the Gentiles from the kingdom of God.... What has been metaphorically understood by the word *wall* is now more plainly expressed. The ceremonies, by which the distinction was declared, have been abolished through Christ” (*Commentary on the Epistle to the Ephesians* [Grand Rapids, MI: Baker, 1981], pp. 236-237). Matthew Poole wrote, “The ceremonies had their accomplishment in Christ, and so their abolishment by him. *The enmity*, by a metonymy he calls the ceremonies, which were the cause of enmity between Jew and Gentile; the Jews hated the Gentiles as uncircumcised, and the Gentiles despised the Jews for being circumcised” (*A Commentary on the Holy Bible*, 3:668). Matthew Henry wrote, “*He broke down the middle wall of partition*, the ceremonial law, that made the great feud, and was the badge of the Jews’ peculiarity.... By his sufferings in the flesh, he took away the binding power of the ceremonial law.... *The legal ceremonies were abrogated by Christ, having their accomplishment in him*” (*Commentary on the Whole Bible*, 6:694). John Gill wrote, “*and hath broken down the middle wall of partition between us*; the ceremonial law, which was made up of many hard and intolerable commands, and distinguished, and divided, and kept up a division between Jews and Gentiles.” (*Exposition of the New Testament* [Streamwood, IL: Primitive Baptist Library, 1979 (1809)], 9:75). Charles Hodge wrote, “But...as Christ abolished the law as a covenant of works fulfilling its conditions, so he abolished the Mosaic law by fulfilling all its types and shadows” (*Ephesians* [Carlisle, PA: The Banner of Truth Trust, 1964 (1856)], pp. 86-87). D. Martyn Lloyd-Jones wrote, “God gave them [the Jews] special laws, these ‘laws of commandments in ordinances,’ as Paul describes them. He means the ceremonial law, the law about burnt offerings and sacrifices, the meal offerings, and all the which you read about in the book of Leviticus and elsewhere” (*God’s Way of Reconciliation: An Exposition of Ephesians 2* [Grand Rapids, MI: Baker, 1972], p. 208). William Hendriksen wrote, “While according to many, the apostle here in verse 15, also refers to this satisfaction rendered by Christ, which opinion I believe to be correct, I agree with Grosheide (op. cit., p. 45) that Paul was thinking *especially* of the ceremonial law. The very wording ‘the law of commandments with its requirements’ points in that direction. So, and very clearly, does the parallel passage, Col. 2:14 (in the light of Col. 2:11, 16, 17)” (*Galatians and Ephesians* [Grand Rapids, MI: Baker, 1979], p. 2:135). Gordon Clark wrote, “...the enmity or wall of partition was not so much the moral law or the Ten Commandments—though the Gentiles were not exemplary in obeying them—but that the ceremonial law and especially circumcision, plus the now increasing Pharisaic and Talmudic intricacies which Jesus referred to in Matthew 15:2-9, produce animosity on both sides” (*Ephesians*, [Jefferson, MD: Trinity Foundation, 1985], p. 85). John Eadie says that the interpretation that this verse refers to, the ceremonial law, was held by Theodoret, Calvin, Bucer, Grotius, Meier, Holzhausen, Olshausen, and Conybeare (see *A Commentary on the Greek Text of the Epistle of Paul to the Ephesians* [Grand Rapids, MI: Baker, 1979], 2:135).

<sup>48</sup> William Hendriksen, *Galatians and Ephesians*, p. 2:135.

human beings at all.”<sup>49</sup> Even the apostle Peter had to be told by God that the Gentiles should no longer be considered “unclean” before he would preach to a Gentile audience and accept them into the Church (cf. Acts 10:9-16). Furthermore, “in Paul’s day there was no independent Jewish nation; the laws of Solomon and Rehoboam, or even Ezra and Nehemiah, or more to the point the Mosaic civil laws in Leviticus, were not in force [i.e., they were not strictly followed by the Jewish civil authorities]. None of these was a factor in the enmity, and the context gives no hint that Paul had civil law in mind.”<sup>50</sup>

If Christ’s death removed not just the ceremonial law but also the civil law then why did the apostle Paul rebuke Ananias for violating a judicial law when he had Paul struck on the mouth? Paul said, “do you command me to be struck contrary to the law?” (Ac. 23:3) Why then did Paul say that a proper design of the law is to restrain: “murderers of father and murderers of mothers, for manslayers, for fornicators, for sodomites, for kidnappers” etc. (1 Tim. 1:9-10)? (“Although [*nomos*] is here without the article, there seems no reason why it should not be understood of the law of God as revealed in the Old Testament Scriptures, rather than, with some, of law generally.”<sup>51</sup>) “Furthermore, that some, indeed most, of the sins stated in aggravated forms leads one to Ex. 21:15ff. (and elsewhere), where the commandments of Exodus 20 are specifically applied and worked out, where we have reference to striking of parents (v. 15), where there is a clear indication that ‘you shall not kill’ is meant to prohibit murder (vs. 12-14), and where one of the forms of stealing is kidnapping (v. 16). By using these aggravated forms from Exodus 21, Paul may be showing the false teachers and the church that when the O.T. applied and worked out the principles of the law, it did so in this very specific way of dealing with people’s sins.”<sup>52</sup> In other words, Paul sets forth the moral case laws within the judicial law as the biblical and proper method for subduing the evil doers of society. Bahnsen gives several examples in the New Testament where the moral case laws within the judicial law is taken for granted as binding: “Isn’t condemning a man without a hearing of a civil matter (John 7:51)? Isn’t murder and its judgment a ‘reference to’ the civil aspect of the law (Matt. 5:21)? Isn’t ‘an eye for an eye’ a civil aspect of the law (Matt. 5:38)? Isn’t the execution of incorrigible delinquents a civil aspect of the law (Matt. 15:4)? Aren’t things ‘worthy of death’ charged by the Jews a reference to civil aspects of the law (Acts 25:7-8, 11)? Isn’t theft a civil matter (Rom. 13:9), extortion (1 Cor. 5:10, 6:10), defrauding of a salary (Jas. 5:4)? Isn’t submission to civil rulers a ‘civil aspect’ of God’s law (1 Pet. 2:13-17)? Our examples could go on and on, but the point should be made by now.”<sup>53</sup> The use of Ephesians 2:15 as a proof text against the civil laws of Israel must be rejected not only because the vast majority of orthodox Protestant interpreters reject such an interpretation but also because such an interpretation contradicts other New Testament passages.

Another common argument against the judicial law is based on the book of Galatians. The authors of the Free Church of Scotland report against Theonomy write, “Paul’s letter to the Galatians is one of the most complete refutations of Theonomy in the Bible. Of course, this is denied by Theonomist writers who understand Paul to be speaking only of the ceremonial law and the fact that we are justified by faith not by keeping the ceremonial law. However, the

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<sup>49</sup> D. Martyn Lloyd-Jones, *God’s Way of Reconciliation: An Exposition of Ephesians 2*, (Grand Rapids, MI: Baker, 1972), p. 209.

<sup>50</sup> Gordon H. Clark, *Ephesians* (Jefferson, MD: The Trinity Foundation, 1985), p. 85.

<sup>51</sup> Patrick Fairbairn, *Commentary on the Pastoral Epistles* (Grand Rapids, MI: Zondervan, 1956 [1874]), p. 86.

<sup>52</sup> George W. Knight III, *The Pastoral Epistles* (Grand Rapids, MI: Eerdmans, 1992), p. 83.

<sup>53</sup> Bahnsen, *No Other Standard*, p. 129.

context makes it clear that it is the whole law, the whole legal covenant made at Sinai, that is being considered.... The fact that circumcision is now no longer necessary shows that there is no obligation to keep the Sinaitic covenant. Christ has redeemed us from the curse of the law by becoming a curse for us (Galatians 3:13). Interestingly, the expression ‘the Book of the Law’ (Galatians 3:10) is used in Deuteronomy of the whole book of Deuteronomy itself which, of course, includes civil regulations as well as ceremonial. This is ‘the whole law’ which the circumcised are obliged to keep, but from which the Christian is free.”<sup>54</sup>

The authors of the Free Church of Scotland report, in their zeal to refute Theonomy, have unwittingly adopted a Dispensational interpretation of Galatians. In the book of Galatians Paul is refuting the notion that a Gentile must become a Jew and keep the law of Moses in order to be saved. Paul teaches that Jesus Christ gives believers a righteousness that cannot be obtained through the law (cf. Gal. 2:21), that men are “justified by faith not the works of the law” (Gal. 2:16), that Christ “redeemed us from the curse of the law” (Gal. 4:5). Thus Christians are free from the whole *law as a means of justification*. If (as the Free Church seemingly asserts) Christians are free from the *whole* law as a means of sanctification then Paul abrogated not only the judicial law but also the moral law including the Ten Commandments. When Paul condemns the Judaizer’s influence on church practice he is condemning the use of the ceremonial law in the New covenant assembly. The Judaizers wanted Gentiles to become Jews and keep all the ceremonial laws in order to join the church. Paul teaches that justification has eliminated the typological-ceremonial aspect of the Mosaic law for both Jews and Gentiles. “I said to Peter before them all, ‘If you, being a Jew, live in the manner of Gentiles and not as the Jews, why do you compel Gentiles to live as Jews?’” (Gal. 2:14). When the Jews were around Peter had changed his eating practices. This refers to ceremonial dietary laws. Paul condemns the use of circumcision (Gal. 5:1-3). He says that circumcision is worthless, what people need is regeneration (Gal. 6:15). While it is true that no aspect of the law can contribute to a person’s justification before God, Paul never condemns the moral or judicial law as a guide for personal or social ethics. However, he does repeatedly condemn the use of the ceremonial laws (cf. Gal. 2:3, 4, 11-15, 4:9-10; 5:2-3, 6, 11, 6:12-13, 15). If one is going to use the book of Galatians as a refutation of Theonomy then one must logically argue that Christians are free from the *whole* Old Testament law (including the Ten Commandments) as a rule for sanctification; and, are only obligated to obey the moral precepts that are repeated in the New Testament. That view is Dispensational to the core.

## Conclusion

The different arguments offered against the abiding validity of the moral case laws contained in the judicial law and the accompanying penal sanctions have not even come close to refuting the Theonomic position. It is this author’s opinion that the current hostility towards Theonomy among Presbyterian and Reformed denominations arose not from a careful

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<sup>54</sup> When the Free Church says that Christians are free from the whole law (“the whole book of Deuteronomy itself”) they never make it clear whether they are discussing justification or sanctification. If they mean justification then their whole argument against Theonomy from Galatians is worthless for the Ten Commandments do not contribute to a person’s justification one iota. If they mean sanctification then they have adopted Dispensationalism, for the book of Deuteronomy contains the Ten Commandments (cf. Deut. 5:6-21). There is simply no way that a person can use Galatians against Theonomy without becoming an implicit Dispensationalist. Every variation of the Galatians argument against Theonomy the author has seen falls into the same antinomian quagmire.

consideration of Scripture but from: a) the sloppy thinking of some of our spiritual forefathers on civil matters (e.g., natural law was viewed by many as an independent and superior source of societal ethics than the Mosaic law.); b) the acceptance and popularity of religious pluralism (i.e., political polytheism) in Europe and America; c) the subtle influence of Dispensationalism on Reformed denominations; d) the bizarre, unbiblical and dangerous teachings on hermeneutics, the Sabbath, worship and holy days that can be found in some Reconstructionist writings.<sup>55</sup> Christians who dislike the central thesis of Theonomy and who particularly dislike the biblical penology should keep in mind that God, not Moses wrote the law and the penalties. Thus they are expressions of justice.

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<sup>55</sup> Read: Kevin Reed, *Canterbury Tales* (Dallas, TX: Presbyterian Heritage Publications); Brian M. Schwertley, *The Regulative Principle of Worship and Christmas* (Southfield, MI: Reformed Witness, 1996); *The Christian Sabbath: Examined, Proved, Applied* (Southfield, MI: Reformed Witness, 1995, 1996). Many of the leaders of what is called the Christian reconstruction movement have advocated a number of unbiblical views and therefore it is necessary for confessional Presbyterians to distance themselves from the movement to a degree while supporting the central thesis of Theonomy. The areas over which truly Reformed believers should part company with the Reconstructionist movement are as follows. (1. Some Reconstructionist writers have openly attacked biblical worship (e.g., David Chilton, James Jordon, Steve Schlissel). The regulative principle of worship has been rejected in favor of an Episcopalian or Lutheran concept of worship. Some Reconstructionist writers have advocated high church worship with incense, cathedrals and other popish trash. (2. Some Reconstructionist writers have opposed biblical church government (i.e., Presbyterianism) in favor of Episcopal church government or a modified independency. (3. Others (e.g., Gary North) have rejected the abiding validity of the 4<sup>th</sup> commandment. (4. James Jordon has advocated “interpretative maximalism” (the idea that every symbol, at every place in the Scriptures, must always be given the same meanings that it has at every other place in the Scriptures). Such a sloppy hermeneutic allows one to prove virtually anything from the Scriptures. (5. Some Reconstructionist writers have attempted to impose a five-fold covenant structure on virtually every section of Scriptures. (6. A number of Reconstructionists have a very weak view of the church. (7. Reconstructionist writers tend to have a very lopsided view of God’s law. The first table (which is obviously more controversial) is generally ignored while the second table receives detailed analysis. (8. Among some Reconstructionists there is an antinomian pragmatic methodology regarding the task of dominion. Arminian and Charismatic heretics are often embraced as the great hope for recapturing society. Although I believe that R. J. Rushdoony and Gary North have greatly benefited Christ’s church by their writings one must separate the wheat from the chaff when reading their books. Further, young believers need to be warned of the deviant opinions of some Reconstructionist writers. At present the Christian Reconstructionist movement contains within it the seeds of its own destruction (i.e., antinomianism and will-worship). We must advocate a distinctly Reformed and Presbyterian Theonomy.