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# HOW SHOULD THE OLD TESTAMENT CIVIL LAWS APPLY TODAY?

Joe M. Sprinkle<sup>†</sup>

## I. INTRODUCTION

What is the role of the Mosaic civil laws today under the new covenant? There have been a number of Christian approaches to this question: the Reformed approach, dispensational approaches, the approach of theonomy (Christian Reconstructionism), and finally the principalizing approach. Each will be discussed in turn.

## II. THE APPROACH OF REFORMED THEOLOGY TO THE LAW

The first approach to the law, an approach that remains influential, is that of Reformed theology.

### A. *The Approach of Reformed Theology to the Law Defined*

Reformed theology's approach to the law is spelled out in the *Westminster Confession of Faith* (A.D. 1646) in Chapter XIX "Of the Law of God."<sup>1</sup> This approach begins by dividing the laws into three categories: moral, ceremonial, and civil.

The *moral law* refers to the broad moral principles of the law, especially as expressed in the Decalogue (Ten Commandments). In Reformed theology, only the moral law is directly applicable to both the Christian and the non-Christian. The explanation sometimes given is this: The moral law, being based on the character of God that does not change, remains forever applicable.

The second category is *ceremonial law*. Ceremonial law (modern Bible scholars often label these *cultic laws*) refers to laws having to do with religious ritual or ceremonies: the sacrifices, the festivals, the tabernacle, laws of clean and unclean and the like. According to the Reformed approach, unlike moral law, ceremonial laws are no longer directly applicable to Christians, but have been supplanted by Christ. Under the Reformed approach, ceremonial law has

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1. The Westminster Confession is published in many places. See, e.g., *The Westminster Confession of Faith (1646)*, available at <http://www.reformed.org/documents/index.html>, [hereinafter *Westminster Confession*]. For a discussion see Sinclair B. Ferguson, *An Assembly of Theonomists? The Teaching of the Westminster Divines on the Law of God*, in *THEONOMY: A REFORMED CRITIQUE* 313-49 (William S. Barker & W. Robert Godfrey eds., 1990).

typological value since the tabernacle and the sacrifices and the festivals foreshadow Christ. Now that the reality has come, there is no need for the shadow.

The third category is *civil law* (labeled *judicial law* in the *Westminster Confession*). Civil laws are regulations to be enforced by the theocratic, national state of Israel in order to maintain a civil society. These include laws prescribing penalties for theft or murder or kidnapping or adultery. Civil laws ordinarily go on to include the penalties associated with violation of the law. Hence, “Do not commit murder”<sup>2</sup> is moral law, but making premeditated murder punishable by death while making unintentional manslaughter punishable by confinement to a city of refuge until the death of the high priest represents civil law.<sup>3</sup> According to the *Westminster Confession*, civil laws are not directly applicable to the Church. The *Westminster Confession* states: “To them also, as a body politic, He gave sundry judicial law, which expired together with the state of that people; not obliging any other now, further than the general equity thereof may require.”<sup>4</sup>

The Reformed approach sees value in the law, especially the moral law. The law is a guide for living. It is a means of discovering one’s own sinful nature and guilt, and therefore one’s need of salvation in Christ. It helps restrain moral corruption in the life of a Christian. It also leads the Christian to be grateful to God for his having delivered the believer from the law’s punishments. On the other hand, the Reformed approach to the law sees little of abiding value in the civil laws except for being obliged to keep “the general equity thereof.”<sup>5</sup>

The *Confession* does not spell out how one might deduce “the general equity” from individual civil laws. The term “equity” was a legal term current in jurisprudence at the time the confession was written, and one with a long pedigree.<sup>6</sup> Harold Cunningham has traced the history of this term in jurisprudence and theology from the time of Aristotle up to the time of English law at the time of the *Westminster Confession*.<sup>7</sup> He concludes that in English law it was a technical term broadly equivalent with “natural justice” or fairness that is more a matter of moral virtue than law. Concepts of equity could influence and moderate the laws enforced by the state, but it was separate from

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2. *Exodus* 20:13.

3. *Exodus* 21:12-14; *Numbers* 35; *Deuteronomy* 19:1-10.

4. *Westminster Confession*, *supra* note 1, at chap. XIX, para. 4.

5. *Id.*

6. Ferguson, *supra* note 1, at 330.

7. Harold G. Cunningham, *God’s Law, “General Equity” and the Westminster Confession of Faith*, 58 *TYNDALE BULLETIN* 289 (2007).

such laws.<sup>8</sup> Cunningham summarizes, “[Equity] functions as a benign interpreter of the law, tempering its rigors with mercy and clemency.”<sup>9</sup> He concludes that “general equity” in the *Westminster Confession*, “is to ask, what is the *intention* behind this specific law? Does it have some enduring substance that could possibly render it ‘universalisable’ (to borrow from Kant).”<sup>10</sup> Thus, Cunningham thinks that the *Westminster Confession*’s call to find the “general equity thereof” in civil law is the same thing as “the principalizing approach” discussed in Part IV.

### *B. Weaknesses of the Approach of Reformed Theology to the Law*

The Reformed approach to the law is helpful in many ways. It rightly recognizes that (as Jesus put it) moral duties like justice, faithfulness and mercy are “weightier” than ceremonial matters like tithing<sup>11</sup> It provides a framework for understanding why the moral obligation of obedience is better than ceremonial rituals like sacrifice<sup>12</sup> and why ceremonial laws such as clean and unclean foods could be abolished by Christ.<sup>13</sup> It explains why the New Testament does not admonish Christians to make the Mosaic Law the law of the state. However, it does not resolve every issue satisfactorily.

The most important problem with the Reformed approach is that the categories are not completely distinct. For example, sometimes there are ceremonial elements among moral laws, moral elements among civil laws, and ceremonial elements among civil laws. Thus, the categories moral, civil, and ceremonial are not strictly distinct. David Dorsey asks the question, “Which of the 613 laws is not moral?”<sup>14</sup> The obvious answer is that they were all moral, and for an Israelite to disobey any of them would have been immoral.

John Frame, himself a Reformed theologian is largely correct when he observes:

The traditional distinction between moral, civil, and ceremonial law is still useful as a catechetical device, but not helpful in resolving

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8. *Id.* at 296.

9. *Id.* at 311-12.

10. *Id.* at 312.

11. *Matthew* 23:23.

12. *1 Samuel* 15:22-23.

13. *Mark* 7:19.

14. David A. Dorsey, *The Law of Moses and the Christian: A Compromise*, 34 J. EVANGELICAL THEOLOGICAL SOC’Y 321, 330 (1991). Jews since Maimonides traditionally reckon there to be 613 laws in the Pentateuch: 248 positive commands and 365 negative commands—one for each day of the year.

concrete problems of application. In asking how a particular law applies to us, we do not assign it first to one of those three categories and then deduce from that its applicability. Rather we ask first concerning its applicability, and on the basis of that conclusion we assign it to one (or more) of these three categories. The Law does not, of course, come to us with the labels "moral," "ceremonial," and "civil" attached to its provisions . . . . Those we apply most literally we call "moral," those we apply least literally we call "ceremonial."<sup>15</sup>

Division of the law into the categories moral, civil, and ceremonial is of heuristic value in allowing us to discuss different kinds of laws with differing degrees of direct application, but the categories are not wholly distinct. There are many examples that show this. For instance, the ceremonial Sabbath law—the only one of the Ten Commandments that is nowhere repeated in the New Testament—is among the moral precepts of the Decalogue.<sup>16</sup> Also, the civil goring ox law has a ceremonial aspect in that the flesh of the stoned animal could not be eaten, presumably because of impurity.<sup>17</sup> The civil law on murder allows freedom for a manslayer to leave the city of refuge conditioned upon a ceremonial element: the death of the high priest.<sup>18</sup> The ceremonial law's prohibition against going up by steps to an altar is related to moral decency in worship (not exposing one's nakedness).<sup>19</sup> The ceremonial admonition not to eat flesh torn by animals is probably based on the moral notion that such behavior is dehumanizing—reducing man to the level of vulture.<sup>20</sup> The ceremonial prohibition against cooking a kid goat in its mother's milk is probably related to avoiding human cruelty nurtured by such a practice.<sup>21</sup>

### III. DISPENSATIONAL APPROACHES TO THE LAW

A second approach to the civil laws can be labeled dispensational approaches.

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15. John Frame, *Towards a Theology of the State*, 51 WESTMINSTER THEOLOGICAL J. 199, 203 (1989).

16. *Exodus* 20:8-11.

17. *Exodus* 21:28.

18. *Numbers* 35:25, 28, 32.

19. *Exodus* 20:26.

20. *Exodus* 22:31.

21. *Exodus* 23:19.

### A. *Dispensational Approaches to the Law Defined*

Reformed theology tries to discover which laws apply today by categorizing the laws into moral laws that do apply and civil/ceremonial laws that do not. Dispensationalism, however, claims that the Mosaic Law as a whole is no longer applicable today. Instead, according to this view, the only Old Testament laws that apply today are those repeated by the New Testament. All others applied solely to Israel, not to the church. Any approach that says that the only Old Testament laws that apply today are the ones repeated by the New Testament is labeled a dispensational approach.

Dispensationalism divides history into different time periods or “dispensations.” Different dispensations have different commands and promises through which God deals with people. Included in this category is classical dispensationalism as well as others who see the Mosaic Law as solely for the Jews.

A form of dispensationalism concerning Mosaic Law was promoted by Alexander Campbell, a founder of the Stone-Campbell Restoration Movement in America. Campbell theologically framed history in terms of three dispensations: the dispensation of the patriarchs (the period from creation to the law of Moses at Sinai), the Mosaic dispensation (the period from the giving of the law of Moses until the Crucifixion/Resurrection/Ascension), and the Christian dispensation (from the day of Pentecost<sup>22</sup> through the end of time).<sup>23</sup> Of the Mosaic Law Campbell states, “It was given to the Jewish nation, and to none else.”<sup>24</sup> Campbell conceived of the overlap between commandments in the Mosaic dispensation and commandments in the Christian dispensation like the overlap of laws of the American colonies under British rule and the laws after the establishment of the American Constitution. The British laws remained valid if and only if they were reaffirmed by the United States.<sup>25</sup> Therefore, Mosaic laws remain valid only insofar as they are reaffirmed under the new covenant.

Campbell rejected the view that any kind of Sabbath observance or tithing or

22. *Acts* 2:38.

23. R. Mark Shipp, *Alexander Campbell and the Relationship between the Testaments*, 14 *CHRISTIAN STUDIES* 20-26 (1994); Todd M. Brenneman, *Prophet and Priest: The Redefining of Alexander Campbell's Identity* 13 (M.A. Thesis; Florida State University, Dept. of Religion, Fall 2005), <http://etd.lib.fsu.edu/theses/available/etd-11022005-122855/> (last visited Sept. 8, 2008).

24. Alexander Campbell, *The Sermon on the Law*, in *HISTORICAL DOCUMENTS ADVOCATING CHRISTIAN UNION* 238 (Charles A. Young ed., 1904) (1846), available at <http://www.mun.ca/rels/restmov/texts/acampbell/mh1846/SOTL.HTM> (last visited Sept. 8, 2008).

25. *Id.* at 233.

state religion should be imposed on Christians.<sup>26</sup> Indeed, he wrote a series of letters to the local Washington (Pennsylvania) newspaper using the pseudonym "Candidus" in which he "criticized Sabbath legislation and the proliferation of moral societies that attempted to enforce religious morality in the public sphere."<sup>27</sup> Campbell saw the imposition of Mosaic regulations in the Christian era as unchristian.<sup>28</sup> This reflects a political implication of Campbell's dispensational view of the law.

A more common form of dispensationalism is what is called classical dispensationalism. Classical dispensationalism is a system derived from Anglo-Irish preacher John Nelson Darby in the nineteenth century. It was popularized in the twentieth century by the writings of C. I. Scofield and his famous *Scofield Reference Bible*. Scofield, following Darby, divided up time up into seven dispensations: the dispensation of innocence (in the garden of Eden), the dispensation of conscience (after Adam and Eve were expelled from the garden), the dispensation of human government (up until Abraham), the dispensation of promise (the patriarchal period), the dispensation of law (after Moses), the dispensation of grace (the church age), and the dispensation of the kingdom age (the millennium after the Second Coming of Christ).<sup>29</sup>

Charles C. Ryrie, a long-time professor of Systematic Theology at Dallas Theological Seminary, author of *Dispensationalism Today*<sup>30</sup> and editor of the *Ryrie Study Bible*, spelled out the classical dispensational approach to the law.<sup>31</sup> According to Ryrie, Christians are not under the Law of Moses in any way at all. We are not under law, but grace.<sup>32</sup> The Christian's relationship with the Mosaic Law has been terminated because "Christ is the end of the law for righteousness to everyone who believes,"<sup>33</sup> and "[i]f you are led by the Spirit you are not under the law."<sup>34</sup> Hence, the Mosaic Law in its totality is abrogated in Christ and is no longer applicable. That includes the Decalogue. Thus, the Mosaic law is neither a means of salvation nor a guide for Christian living.

The classical dispensational view is not antinomian, however.<sup>35</sup> Christians,

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26. *Id.* at 279.

27. Brenneman, *supra* note 24, at 13.

28. *Id.*

29. C.I. SCOFIELD, RIGHTLY DIVIDING THE WORD OF TRUTH ch. 2 (1896), available at [http://www.biblebelievers.com/scofield/scofield\\_rightly02.html](http://www.biblebelievers.com/scofield/scofield_rightly02.html).

30. C.C. RYRIE, DISPENSATIONALISM TODAY (rev. ed. 1995) (1966).

31. C.C. Ryrie, *The End of the Law*, 124 BIBLIOTHECA SACRA 239 (1967).

32. *Romans* 6:14.

33. *Romans* 10:4.

34. *Galatians* 5:18.

35. "Antinomianism" (from Greek *anti* "against" and *nomos* "law") holds that under the gospel dispensation of grace the moral law is of no use or obligation because faith alone is

according to this view, are not under no law but are under a different law: the “law of Christ.”<sup>36</sup> Although we are under a completely different system—the law of Christ rather than the law of Moses—that new system incorporates some individual Mosaic commands and thus overlaps with the Mosaic law. But it is not the Mosaic law that is authoritative for us as Christians, it is the law of Christ.

It might not be unfair to call the Lutheran approach to the law a form of dispensationalism as well. Traditional Lutheran theology is laid out in the *Book of Concord* (A.D. 1580).<sup>37</sup> According to Lutheran theology, the law is given for several purposes: (1) The law maintains external discipline; (2) The law leads men and women to a knowledge of sin and prepares them for the grace of the gospel; (3) For those reborn in Christ, the law regulates the lives of Christians.

It must be understood, however, that Lutheran theology does not mean by “law” what other theological systems do. The “law” in Lutheran theology is not the law of Moses but rather it is “the unchangeable will of God,” the moral law as epitomized in the Decalogue and natural law. The judicial laws of Moses were binding only on the Jews during their day except insofar as they reflect natural law. Luther puts it in his typically pungent way:

Moses was an intermediary solely for the Jewish people, to whom God gave the law . . . . Moses does not concern us. If I accept Moses in *one* commandment, I must accept all of Moses. Thus it would follow if I accept Moses as master, then I must let myself be circumcised according to Jewish custom, eat, drink and dress thus and so, and observe all that stuff . . . . Now if anyone confronts you with Moses and his commandments and wants to press you to keep them, say ‘Go to the Jews with your Moses; I am no Jew, don’t entangle me with Moses.’”<sup>38</sup>

According to Luther, Christians are bound to obey the civil laws of their own nations and not reinstitute the Mosaic laws. Luther allows that some laws of the Jews might be incorporated into the civil laws of Gentile nations, but this is the same “as when one nation follows examples from laws of other nations, as the Romans took the Twelve Tables from the Greeks,”<sup>39</sup> and not a matter of

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necessary for salvation. WEBSTER’S NEW COLLEGIATE DICTIONARY (3d ed. 1981).

36. 1 *Corinthians* 9:21; *Galatians* 6:2.

37. BOOK OF CONCORD: CONFESSIONS OF THE EVANGELICAL LUTHERAN CHURCH 87, 223, 478-79, 561-68 (Theodore Tappert trans., 1959) (1580).

38. *Quoted in* HEINRICH BORNKAMM, LUTHER AND THE OLD TESTAMENT 122 (Eric W. & Ruth C. Gritsch trans., Victor Gruhn ed., 1969).

39. *Id.* at 123.



authority. Luther's view thus contrasts with that of the Calvinists in theocratic Geneva who made religious offenses capital ones on the basis of Mosaic laws. In Lutheran thought, spiritual and temporal authorities are not to be mingled or confused.

*B. Weaknesses of Dispensational Approaches to the Law*

Although dispensational approaches are internally coherent and offer certain proof texts in support of their position, there are significant problems with this kind of approach.<sup>40</sup>

A verse that shows a weakness in dispensational approaches is *Second Timothy* chapter three, verses sixteen and seventeen. There Paul states, "[a]ll Scripture is inspired by God and is profitable for teaching." "All Scripture" includes the Mosaic civil laws. Dispensational approaches, however, typically ignore the Mosaic civil laws in practice and find little if any profit in them. If this verse is true, it must be possible to find profit even in the judicial regulations. Dispensational approaches need to strengthen their systems by discovering a method for finding profit in the laws not repeated by the New Testament.

Another problem is Jesus' statement that he "did not come to abolish the law . . . but to fulfill."<sup>41</sup> This seems hard to reconcile with dispensational approaches to the law that sees most of the Mosaic law as simply abrogated. Bahnsen<sup>42</sup> notes that interpreters often take "fulfill" in *Matthew* chapter five, verse seventeen as if it meant "bring to an end," but he argues that to read the verse that way is to make the verse self-contradictory as if it said, "I did not come to abolish the law, but to bring it to an end." The statement that Jesus "did not come to abolish the law" supports the notion that the law, including its civil regulations, has abiding value subsequent to the advent of Christ.

Paul's positive statements about the Law of Moses are also problematic for dispensational approaches to the law. Paul considers the law the embodiment of truth by which the Jews are instructed,<sup>43</sup> but in *Romans*, Paul also affirms that the law is for Christians: "Do we nullify the law by this faith? On the contrary, we uphold the law."<sup>44</sup> The law is holy and spiritual. Love is the fulfilling of the law.<sup>45</sup> How could Paul say these things if a dispensational approach to the law were true?

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40. *John* 1:17; *Romans* 6:14; 10:4; *Galatians* 5:18.

41. *Matthew* 5:17-20.

42. GREG L. BAHNSEN, *THEONOMY IN CHRISTIAN ETHICS* 54 (1979).

43. *Romans* 2:18-19.

44. *Romans* 3:31.

45. *Romans* 7:12-14; 13:10.

Bruce Waltke is a former dispensationalist who was once a professor of Old Testament at the dispensational Dallas Theological Seminary. He observes that classical dispensationalism typically ignores the important concept of the lordship of Christ in every area of life, concentrating instead almost exclusively on personal, individual piety.<sup>46</sup> But, he asks, should not the truth that “Jesus is Lord” find practical expression in modern civil law as well as every other area of existence? Surely it should.

#### IV. APPROACH OF THEONOMY (CHRISTIAN RECONSTRUCTIONISM)

A third approach to the Mosaic civil laws is that of theonomy or Christian Reconstructionism.

##### *A. Theonomy's Approach to the Law Defined*

Theonomy means literally, “law of God.” Theonomy is part of a broader movement known as Christian Reconstructionism. This movement—advocated by R. J. Rushdoony, Greg Bahsen, Gary North, and Kenneth Gentry—gained notoriety in Christian circles in the 1970s and 1980s,<sup>47</sup> though its strength as a movement appears to have waned. Christian Reconstructionism seeks ultimately to recapture all social and political institutions for Christ and create a Christian culture. One element of that is to seek to establish “the law of God,” including the Old Testament civil laws as the law of the modern state.

Theonomy represents a modification of the traditional Reformed approach to the law. Theonomists agree with the advocates of the Reformed approach that the ceremonial law is superseded under the new covenant but disagree with them over the continued applicability of the civil law. Whereas the traditional Reformed approach to the law says only the moral law is directly applicable today, Christian Reconstructionists (theonomists) argue that both the moral and the civil regulations of the Mosaic Law are directly applicable today.

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46. Bruce K. Waltke, *Theonomy in Relation to Dispensational and Covenant Theologies*, in THEONOMY: A REFORMED CRITIQUE, *supra* note 1, at 66.

47. Works defending theonomy include: GREG L. BAHNSEN, THEONOMY IN CHRISTIAN ETHICS (1979); KENNETH L. GENTRY, GOD'S LAW IN THE MODERN WORLD: THE CONTINUING RELEVANCE OF OLD TESTAMENT LAW (1993); GARY NORTH, TOOLS OF DOMINION: THE CASE LAWS OF EXODUS (1990); ROUSAS J. RUSHDOONY, THE INSTITUTES OF BIBLICAL LAW (1973). Works critiquing theonomy include: THEONOMY: A REFORMED CRITIQUE (William S. Barker and W. Robert Godfrey eds., 1990); H. WAYNE HOUSE & THOMAS ICE, DOMINION THEOLOGY: BLESSING OR CURSE? (1988); Meredith M. Kline, *Comments on an Old-New Error*, 41 WESTMINSTER THEOLOGICAL J. 172 (1978) (reviewing GREG L. BAHNSEN, THEONOMY IN CHRISTIAN ETHICS (1984)); Douglas A. Oss, *The Influence of Hermeneutical Frameworks in the Theonomy Debate*, 51 WESTMINSTER THEOLOGICAL J. 227 (1989).

Theonomists believe that Christians should work towards establishing a theocratic state in the world. Society, they believe, needs to be reconstructed through changing its laws so that modern legal codes are made to conform with the Mosaic civil laws as found in the Pentateuch, including the sanctions or penalties of those laws. Hence, offenses such as striking parents, idolatry, witchcraft, Sabbath breaking and worship of gods other than Yahweh should become capital offenses as they were in the Old Testament. The choice then, say theonomists, is God's law or man's law: theonomy or autonomy.

*B. Weaknesses of Theonomy's Approach to the Law*

Although the approach of theonomy is attractive in that it provides a way of finding "profit"<sup>48</sup> in the Old Testament civil laws that are so often ignored, it also has serious weaknesses.

One weakness is that theonomy takes insufficient account of the new theological setting of the church age. The church is not a nation, and America is not the promised land. Since we are not a theocracy, theocratic laws do not seem directly relevant. With a change in covenant, there is necessarily a "change of law" and a "setting aside of the former commandment."<sup>49</sup> Theonomy, in denying that there has been substantive change of law, has denied the newness of the new covenant.<sup>50</sup> If the civil law were directly applicable to Christians as theonomists claim, one would expect them to show up in New Testament discussions of the Christian and the state. Paul discusses matters of civil obedience in *Romans* chapter thirteen but makes no reference to the laws given to Moses at Mt. Sinai.<sup>51</sup>

A second weakness is that theonomy fails to take into sufficient account the change in cultural and historical settings between Pentateuchal times and today that make certain laws inapplicable. For example, cities of refuge regulations that call upon manslaughterers to flee to a city of refuge for a trial to determine whether the offense is unintentional or deliberate murder might have been a practical means for dispensing justice in a tribal, immobile, agrarian, low-population society where everybody knew everybody, but such an arrangement would hardly work in the mobile, urban, high population cities of today.<sup>52</sup> Some laws seem never to have been enforced as law even in the Old Testament. There is no evidence that a Year of Jubilee was ever proclaimed in Old

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48. 2 *Timothy* 3:16.

49. *Hebrews* 7:12, 18.

50. *Jeremiah* 31:31-34; T. David Gordon, *Critique of Theonomy*, 56 WESTMINSTER THEOLOGICAL J. 23, 39 (1994).

51. Gordon, *supra* note 50, at 28.

52. *Deuteronomy* 19; *Numbers* 35.

Testament times.<sup>53</sup> Other laws assume cultural conditions that do not occur in Western societies: debt slavery;<sup>54</sup> fat-tailed sheep;<sup>55</sup> flat-roofed houses where people regularly walk;<sup>56</sup> the custom of brideprice and dowry;<sup>57</sup> climate of Palestine for festival dates<sup>58</sup> and the like.<sup>59</sup> Changes in cultural and historical settings thus make many laws appear inapplicable. On the other hand, Jesus' admonition to "[r]ender to Caesar that which is Caesar's"<sup>60</sup> acknowledges there can be a change of "law" due to a change in historical circumstance.

A third weakness of theonomy is that it would have great potential of degenerating into tyranny. In the past the attempts to tie church and state too closely—Calvin's Geneva with its persecution of Anabaptists, Spain during the Inquisition, Cromwell's Puritan Revolution in England with its persecution of Catholics—have not worked out well. Even just laws in the hands of fallible human administrators could be twisted into something unjust and oppressive. Ralph Reed, who believes in religiously informed political action by Christians, repudiates Christian Reconstructionism because of its potential for oppression: "Reconstructionism is an authoritarian ideology that threatens the most basic civil liberties of a free and democratic society."<sup>61</sup>

The final weakness of theonomy is that, contrary to theonomy's approach to the civil law, the New Testament does not indicate that the penalties in Mosaic laws are eternally abiding. Instead, the New Testament applies the principle of the law to the Church apart from the original sanctions. In Paul's *First epistle to the Corinthians*, Paul brought up the topic of adultery in the church. When a man slept with his father's wife, Paul does not even hint that the law's death penalty should be applied, but directs that the individual should receive church discipline until he repented.<sup>62</sup> Similarly, Jesus allowed divorce in the case of adultery but made no suggestion that one should apply the death penalty for this offense, even though adultery was punishable by death in the Old Testament.<sup>63</sup>

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53. *Leviticus* 25, 27.

54. *Exodus* 21:1-11.

55. *Exodus* 29:22.

56. *Deuteronomy* 22:7.

57. *Exodus* 22:16-17.

58. *Leviticus* 23:33-39.

59. Dorsey, *supra* note 14, at 325-29.

60. *Matthew* 22:21.

61. Quoted by Richard J. Neuhaus, *Ralph Reed's Real Agenda*, [http://www.firstthings.com/article.php3?id\\_article=3925](http://www.firstthings.com/article.php3?id_article=3925) (review of RALPH REED, *ACTIVE FAITH: HOW CHRISTIANS ARE CHANGING THE SOUL OF AMERICAN POLITICS* (1996)).

62. See 1 *Corinthians* 5:1-5; cf. *Leviticus* 18:29; Walter C. Kaiser, *God's Promise Plan and his Gracious Law*, 33 J. EVANGELICAL THEOLOGICAL SOC'Y 289, 292 (1990).

63. Tremper Longman, *God's Law and Mosaic Punishments Today*, in *THEONOMY: A*

The New Testament appears to adjust the sanction due to the changed historical and theological situation.

## V. THE PRINCIPALIZING APPROACH TO BIBLICAL LAW

The final approach to the civil laws is the principalizing approach. This approach is preferred by a number of biblical scholars, including the author.<sup>64</sup>

### A. *The Principalizing Approach to the Law Defined*

According to the principalizing approach, it is necessary to look at each law and ask what principle—moral or religious—underlies this regulation. Kaiser calls this the “most common method of finding contemporary relevance from particular laws of another time and culture.”<sup>65</sup>

Fundamental to this approach is to recognize that the law has changed since the advent of Christ. Whereas Christ “did not come to abolish the law . . . but to fulfill,” the fulfillment of the law by Christ nevertheless has transformed the way in which we apply Old Testament laws.<sup>66</sup> These laws must be read in the light of the dawning of the new, eschatological age.<sup>67</sup> Mosaic laws no longer apply directly to the Christian in part because those laws were written for a particular historical-cultural setting that no longer exists. More significantly, in fulfilling the law, Christ brought us under a different *theological* setting of the new covenant. Nevertheless, Christians can and should continue to derive moral and religious principles from Mosaic laws, including the civil laws.

Let us revisit the case of the cities of refuge. In today’s modern urban, mobile societies, it would be absurd and impractical to try to reinstitute the cities of refuge regulations, designed as they were for a primitive, rural, non-mobile population. Nonetheless, certain principles can be deduced: (i) Murder

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REFORMED CRITIQUE, *supra* note 1, at 53.

64. Among those who approach the law in this way are: WALTER C. KAISER, TOWARD OLD TESTAMENT ETHICS (1983); WALTER C. KAISER, THE USES OF THE OLD TESTAMENT IN THE NEW; WALTER C. KAISER, TOWARDS REDISCOVERING THE OLD TESTAMENT (1987); JOE M. SPRINKLE, BIBLICAL LAW AND ITS RELEVANCE (2006); David A. Dorsey, *The Law of Moses and the Christian*, 34 J. EVANGELICAL THEOLOGICAL SOC’Y 321-334 (1991); Moshe Greenberg, *More Reflections on Biblical Criminal Law*, 31 SCRIPTA HIEROSOLYMITANA 1 (1986); Moshe Greenberg, *Some Postulates of Biblical Criminal Law*, in YEHEZKEL KAUFMANN JUBILEE VOLUME 3-28 (Menabem Haran ed., 1960); J. Daniel Hays, *Applying the Old Testament Law Today*, 158 BIBLIOTHECA SACRA 21-35 (2001); WALTER C. KAISER, *God’s Promise Plan and his Gracious Law*, 33 J. EVANGELICAL THEOLOGICAL SOC’Y 289-302 (1990).

65. WALTER C. KAISER, TOWARDS REDISCOVERING THE OLD TESTAMENT 157 (1991).

66. *Matthew* 5:17.

67. See generally FRANK THIELMAN, PAUL & THE LAW (1994).

is terribly wrong. (ii) Intentional murder—a capital offense—is a more serious crime than unintentional or accidental manslaughter which is not a capital offense. (iii) Even negligent manslaughter is a very serious offense that requires punishment. (iv) The connection between the release from the city of refuge and the death of the high priest implies the religious doctrine of substitutionary atonement, reminding Christians of the atoning power of the death of Jesus Christ, our high priest.

There are a number of places where the Bible appears to principalize the laws.<sup>68</sup> For example, in the Old Testament book of *Ezra*, the prophet Ezra refers to a law proscribing marriage to “Canaanites” and uses it to condemn Jewish intermarriage with non-Canaanite foreigners.<sup>69</sup> This was justified because the same principle applied: Marriages with Canaanites would lead Israel astray spiritually. Therefore, marriages to “the peoples of the land” in Ezra’s day would do the same. Here the principle of *Deuteronomy*’s law applies rather than its literal reading.

Paul also seems to principalize the law. In Paul’s *First Epistle to the Corinthians*, Paul takes a law from the book of *Deuteronomy* (“[d]o not muzzle an ox while he is threshing”<sup>70</sup>) and uses it to argue that Christian ministers should be supported economically.<sup>71</sup> How did he get that out of this law? The law from the book of *Deuteronomy*<sup>72</sup> essentially allows oxen to dip down and eat some of the grain that would from time to time fall across their path while threshing. This among other things teaches people to be kind to animals that would otherwise be driven to distraction by smelling grain they could not eat. Paul evidently sees a deeper, more abstract principle in this law—namely that those that work for you should benefit from the work that they do. The law about oxen reflects a larger principle that workers should receive material benefit from their labors. That principle can in turn be applied back to ministers who ought to be paid for their ministries.<sup>73</sup> Paul repeats this use of *Deuteronomy* to justify paying ministers<sup>74</sup> where he quotes it in parallel with a saying of Jesus, as if both were equally authoritative.<sup>75</sup>

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68. Some of these examples are after Dan G. McCartney, *The New Testament Use of the Pentateuch: Implications for the Theonomic Movement*, in *THEONOMY: A REFORMED CRITIQUE*, *supra* note 1, at 129-49.

69. *Ezra* 7:1-5; 9:1-2.

70. *Deuteronomy* 25:4.

71. *1 Corinthians* 9:9-14.

72. *Deuteronomy* 25:4.

73. KAISER, *supra* note 65, at 164-66.

74. *1 Timothy* 5:18.

75. *Id.*

In his *Second Epistle to the Corinthians*, Paul uses two other passages from *Deuteronomy*<sup>76</sup> that require “two or three witnesses” in court cases by analogy to a church conference.<sup>77</sup> The common principle is that judgments need to be based on solid evidence. The command “do not be unequally yoked together with unbelievers”<sup>78</sup> is derived from an Old Testament law about not yoking an ox and a donkey together.<sup>79</sup> This law is among laws of inappropriate mixtures that teach Israel the concept of holiness or separation. That principle applies by analogy to Christians who are to avoid certain kinds of relationships.

Paul uses principalization to apply some civil laws apart from state enforcement. Again, in the *First Epistle to the Corinthians*, Paul affirms the principle found in the book of *Leviticus*<sup>80</sup> that incest between a man and his father’s wife is wrong.<sup>81</sup> Yet, he does not apply the law with its death penalty directly. Instead, perhaps in view of the new redemptive setting under the new covenant, and in view of the historical circumstances where enforcement of the sanction would be a crime, he substitutes excommunication for execution. In this cultural and covenantal setting, the *morality* of the law applies directly, but the *sanction* does not. This does not preclude the state making such an offense into a crime to be enforced by the state, but shows how the church can still apply the principle of the Mosaic Law, even when an offense happens to be allowed by the state.

Similarly, Paul also condemns homosexual acts.<sup>82</sup> The second of Paul’s terms for homosexual is Greek ἀρσενικοῦται. Richard Hays rightly argues that this word is derived from the second century B.C. Septuagint (LXX) Greek translation of the verse in *Leviticus* reading, “Whoever sleeps with a male in the manner of bedding (intercourse with) a woman (μετὰ ἀρσενος κοιτεν γυναικος), they have both committed an abomination.”<sup>83</sup> Paul’s term for homosexual ἀρσενικοῦται combines *Leviticus*’s term “male” (ἀρσεν) and the word “bed/intercourse” (κοιτεν). Paul’s compound word is not found in any extant Greek text earlier than Paul’s *First Epistle to the Corinthians*, but seems to come directly from the LXX translation of *Leviticus*.<sup>84</sup> Thus, Paul is reaffirming the morality of the prohibition in *Leviticus*, though he does not

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76. *Deuteronomy* 17:6-7; 19:15.

77. *2 Corinthians* 13:1.

78. *2 Corinthians* 6:14.

79. *Deuteronomy* 22:10.

80. *Leviticus* 18:8, 29.

81. *1 Corinthians* 5:1-3.

82. *1 Corinthians* 6:9.

83. *Leviticus* 20:13.

84. RICHARD B. HAYS, *THE MORAL VISION OF THE NEW TESTAMENT* 382-83 (1996).

apply its earthly sanction: the death penalty. Instead, Paul announces a heavenly sanction: Such persons will not inherit the kingdom of God.<sup>85</sup> Christians can apply the moral principles of the civil laws even under circumstances where enforcement of sanctions proves impossible or are deemed unnecessary under the new covenant.

These examples appear sufficient to show that both the Old Testament and the New Testament uses a principalizing approach in applying the law.

### *B. Weaknesses of the Principalizing Approach to the Law*

Is it possible to derive principles from particular laws? B. S. Jackson,<sup>86</sup> discussing the “underlying principles” approach of Moshe Greenberg, questions the degree to which one can derive general principles from specific laws. In the case of one man’s ox goring another man’s ox to death in which no one is at fault, the law says the two owners are to split the losses.<sup>87</sup> But how far can we generalize this conclusion? No abstraction—i.e., it only applies to oxen, but not other animals. Some abstraction—i.e., it applies when one man’s animal kills another man’s animal. Or, broad abstraction—i.e., it applies when one man’s property damages another man’s property. To Jackson such decisions appear subjective.

While Jackson is right that deducing principles is tricky; nonetheless, it is not impossible. Unlike modern *positive law*, the modern legal theory that tries to regulate by enacting law in exhaustive detail, both biblical and ancient Near Eastern laws represent paradigmatic law, giving illustrations of justice and providing examples to inform judges when they dealt with analogous cases. Raymond Westbrook comments on Jackson: “Jackson . . . argues that Babylonian law dealt in cases, not principles. We would argue that it dealt in principles but could only express them as cases. The principles can be extracted, but by applying the *native* cultural and social concepts.”<sup>88</sup> He also states, “[The court] looked to the code, not for an exact, mechanical precedent, but for the *principle* [emphasis added] that the code indirectly laid down through its examples.”<sup>89</sup>

For the Bible the “*native* cultural and social concepts” are primarily found through analogy of Scripture, that is, comparing any deduced principle with

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85. 1 *Corinthians* 6:10.

86. BERNARD S. JACKSON, *ESSAYS IN JEWISH AND COMPARATIVE LEGAL HISTORY* 25-63 (1975).

87. *Exodus* 21:35.

88. RAYMOND WESTBROOK, *STUDIES IN BIBLICAL AND CUNEIFORM LAW* 77 n.156 (1988).

89. *Id.*



biblical teaching elsewhere to see if the alleged principle is compatible. If it is not, then the interpreter has reached the wrong conclusion. Similarly, it is necessary to compare biblical laws with other laws in the ancient Near East as a means of checking whether a supposed principle is consistent with the contemporary cultural milieu. Another problem with the principalizing approach is that unlike theonomy it does not give precise guidance as to which civil laws Christians ought to be seeking to enact in today's society. This problem is addressed in Part V.

#### VI. APPLICATION TO JURISPRUDENCE

The conclusions so far can be summarized. How do the Old Testament civil laws apply today? Contrary to the approach of theonomy, the Mosaic civil laws taken as whole do not appear to apply directly today, in part because we are under the new covenant and in part because of the changed historical circumstances. But neither are they to be ignored as completely obsolete as has been common among Christians, for (like all the Scripture) they are profitable for teaching and reproof. Rather, we should seek in the civil laws principles of justice that can apply personally and could apply to laws today. As the above sections have shown, the principalizing approach to the law seems the most satisfactory method for attempting to apply Mosaic civil laws today. It allows an affirmation the lordship of Christ in every area of life, even the judicial, while at the same time takes into full consideration the changes necessary under the new covenant.

This principalizing approach is not in fact incompatible with either the Reformed approach or a dispensational approach. The statement about judicial laws in the *Westminster Confession* as "not obliging any other now, further than the general equity thereof may require"<sup>90</sup> suggests that one can find principles of "equity" or fairness/justice in the civil laws, even in laws not directly applicable today. This can be done by principalizing. Likewise, a dispensationalist who says that only those laws repeated in the New Testament apply directly to Christians today could still see indirect application in the Mosaic civil laws by seeking the underlying principles that those Mosaic civil laws imply.

A still further question is: how more precisely can Christians apply the Old Testament civil laws to the laws of the state today? The general response is this: after deducing from the civil laws moral principles one should then seek to establish modern civil laws that are consistent with those principles. It is a lifetime project to work out all the implications of this general response.

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90. *Westminster Confession*, *supra* note 1, at chap. XVI, para. 4.

Christian lawyers, judges, and legislators should consider applying the principles of the Bible's civil laws more specifically.

*A. Do justice*

Judge Robert Bork<sup>91</sup> relates a story of two great figures of the law, Justice Holmes and Judge Learned Hand.<sup>92</sup> After having lunch together Holmes was leaving and Hand tells him, "Do justice, sir, do justice." But Holmes stopped his carriage and replied, "That's not my job. It is my job to apply the law."<sup>93</sup>

Biblical judges did not have the option of simply "applying the law" because the Bible's laws are not comprehensive. It contains 613 laws by Jewish reckoning—many of which are moral or ritual rather than judicial. The judicial laws in the Bible cover but a tiny proportion of the cases and extenuating circumstances that a judge would actually encounter. Judges in practice had to use the laws as illustrations of justice and then interpolate from these examples to the particulars of the case before them, doing so informed by divine morality and equity.

Does justice mean more than simply following legal procedure? Biblical law affirms that it does mean more. In modern law, judges can mechanically "apply the law" whether or not that application of the law is just. The modern conception of law as "a delicate balance of competing interests" can be understood as an amoral system that may even reject the concept of equity in the sense of real good and evil. Without an affirmation that right and wrong exists apart from the state's laws, law can become little more than an arbitrating of groups competing for power, or even a capricious empowerment of a privileged group rather than an attempt to establish that which is right. But the Bible, whose morality stands above the state's laws, can condemn some laws as inherently unjust: "Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless."<sup>94</sup> The Bible's concept of law seeks to make it an expression of ethics, and biblical ethics can and should serve as judge over the laws of the state.

The legal system to be preferred would be one based on biblical civil laws, that like the Bible affirms the real existence of right and wrong. The present

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91. ROBERT BORK, *THE TEMPTING OF AMERICA* 6 (1990).

92. Michael Herz, 'Do Justice, Justice!' *Variations of a Thrice-Told Theme*, 82 VA. L. REV. 111-61 (1996).

93. *Id.*

94. *Isaiah* 10:1-2.

relativistic and politically correct modern secular culture typically refuses to label things like abortion, gambling, cohabitation without benefit of marriage, pornography and unwed motherhood as “wrong,” much less make them illegal. Christians, in contrast, should begin with a morality founded on the character of God that does allow certain behaviors and even certain regulations of the state to be condemned as morally wrong. Christians involved in law and politics should seek to make the legal system consistent with biblical concepts of equity and justice, concepts that can in part be derived from the Mosaic civil laws.

### *B. Religious Morality Undergirds Law*

One might conceive of law as the secular state imposing its will from above down upon the people. Biblical laws did more than that. Biblical laws were not merely used by judges, but were used by religious leaders to teach morality to the people. In other words, law had a pedagogic as well as a legal purpose. Whereas it is true that the state does impose law from above, this way of thinking should be supplemented by the Bible’s recognition of the need for personal morality based on religion to undergird the law from below. The attempts of secular states to suppress all expression of religion in the public sphere will in the end undermine attempts to establish a just and orderly society.

### *C. Duties as Well as Rights*

Judging as a non-lawyer, it appears to me that since the 1960s, the law has placed more emphasis on rights and conversely less emphasis on duties. Arguably, the law could be improved by adding more of biblical law’s emphasis on duties that citizens are obligated to keep. Many of the duties in biblical law are ones difficult for the state to enforce. Israelites were duty-bound by the laws to let slaves rest on Sabbaths, to honor their parents, to be compassionate to widows and empathetic to foreigners, to help the poor living among them, to show respect for rulers, to do good to one’s enemies.<sup>95</sup> The current emphasis on “my rights” without the balancing commitment to “my duties” that promote the good of society is an unhealthy narcissism.

### *D. Prisons Versus Restitution*

There are various penalties meted out in the Old Testament civil laws—monetary and corporal—but prison is not one of them. For example, the Bible makes theft a matter of tort between the offender and the victim and obligates

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95. *Exodus* 20:10, 12; 22:21-22, 25-27, 28; 23:4-5, 9.

the criminal to make restitution directly to the individual wronged. This is arguably more just and more cost effective than the modern system that makes theft a crime against the state in which the offender pays his debt to “society” through prison but not directly to the victim, unless the victim sues the offender in a separate (civil) court. Charles Colson and his Christian organization Justice Fellowship<sup>96</sup> as well as the theonomist Rushdoony<sup>97</sup> argue for the prudence of sentencing reforms that (like the Bible’s civil laws) pay more attention to benefiting victims and lean less on prison as the punishment of first choice for non-violent crimes.

### *E. Capital Punishment*

The Bible has a number of offenses which were punishable by death, though they do not all need to be instituted as law today. The religious-oriented capital offenses in the Bible, such as those against sorcery, worshipping other gods, and breaking the Sabbath are related to the special holiness of Israel as a chosen people living in the Holy Land around the tabernacle.<sup>98</sup> These do not apply to anyone today. Even in Old Testament times, these sorts of laws were not enforced thoroughly upon pagans.<sup>99</sup> Pagan sojourners were tolerated and the laws demand they be treated decently despite their pagan past. With the single exception of the Canaanites, Israel was not directed to execute foreigners captured in war simply for being pagans.

That said, one capital offense that is most easily justified as applicable today is that for murder. The Bible makes premeditated, deliberate murder a capital offense.<sup>100</sup> This particular law appears especially applicable because the demand to kill murderers predates Moses. It was first made at the time of Noah to the progenitors of all the nations.<sup>101</sup> Since this was given to the nations (and not just Israel), it appears broadly applicable despite the change of covenants with Israel. There is no evidence that the New Testament reverses this principle. Instead, it appears to acknowledge the state’s right to bear the sword, the instrument of execution.<sup>102</sup>

On the other hand, certain things that have been made capital offenses in

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96. Justice Fellowship, *Issues in Criminal Justice Reform: Sentencing Reform*, <http://www.justicefellowship.org/key-issues/issues-in-criminal-justice-reform> (last visited Oct. 17, 2009).

97. ROUSAS J. RUSHDOONY, *INSTITUTES OF BIBLICAL LAW* 514-22 (1973).

98. *Exodus* 22:18, 20; *Numbers* 15:32-38.

99. *Exodus* 22:21.

100. *Numbers* 35:16-21, 30-31.

101. *Genesis* 9:6; 10.

102. *Romans* 13:4.

certain times and places are not capital offenses in the Bible. William Barclay—though without citing any sources—states that under Roman laws, seduction and rape were punishable by death; and, once in English law, there were as many as 200 crimes for which a person could be hanged, sometimes for stealing as little as three new pence.<sup>103</sup> But the Bible only makes rape a capital offense when it involves adultery and never makes simple theft a capital offense.<sup>104</sup> Seduction and rape were punished by fine and possibly forced marriage, and theft was punishable by multiple restitution and servitude if one could not pay, but not death.<sup>105</sup> Rape was a capital offense in some parts of the United States until 1977, when the Supreme Court in *Coker v. Georgia* overturned it.<sup>106</sup> The Court's ruling that "a sentence of death is grossly disproportionate and excessive punishment for the crime of rape"<sup>107</sup> seems to be fully justified when judged on the basis of biblical law's morality. In general it seems unjust for a society to impose a penalty harsher than that imposed by the Bible for a given offense.

## VII. CONCLUSION

This list is hardly an exhaustive list of ways biblical law might rightly influence modern law, but at least suggests ways in which principles derived from Mosaic civil laws could be applied today.

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103. WILLIAM BARCLAY, *THE TEN COMMANDMENTS FOR TODAY* 75 (1977).

104. It does make stealing "devoted things" under the "ban" that were only for divine use a capital offense (*Joshua* 7:1, 19-26), but this is a religious offense of stealing from God, not simple theft.

105. *Exodus* 22:16-17; *Deuteronomy* 22:28-29; *Exodus* 22:1-4.

106. *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

107. *Id.*