

# Spirit of the Law

## **A critique of Dr. Joel McDurmon's *Cherem Principle* as put forward in his book, *The Bounds of Love*.**

*For whoever keeps the whole law but fails in one point has become accountable for all of it. For he who said, "Do not commit adultery", also said, "Do not murder." If you do not commit adultery but do murder, you have become a transgressor of the law.*

*James 2:10-11*

*I have more understanding than all my teachers, for your testimonies are my meditation. I understand more than the aged, for I keep your precepts.*

*Psalms 119:99-100*

## **Foreword by Dr. Joe Morecraft III**

Robert Hoyle's article is a well-written corrective of Joel McDurmon's innovative interpretation of the relationship between biblical law and the civil government in his book, "The Bounds of Love." Hoyle's article is representative of solid biblical exegesis, consistent use of the grammatical-historical hermeneutic, and of an earlier and more biblical theology of Christian Reconstruction. I look forward to more books and articles by R. J. Hoyle expounding and defending the historic reformed faith and biblical ethics.

McDurmon's interpretation greatly limits the role of civil government in opposing evil in our culture. Because of that, it will have the unintended effect of emboldening evil people. I have learned much from Joel McDurmon; he has a mind for the universe, narrowed by Jim Jordan's

hermeneutic. My sincere prayer is that God would bless R. J. Hoyle in everything he sets his hand to do as he is faithful to Him.

Pro Rege,

## Introduction

Throughout the history of the Church there have always been many ongoing debates, not the least of which is the validity and applicability of biblical law to contemporary society. This being the case, it is from time to time necessary to remind both the Church and society at large of the necessity of maintaining laws and a system of justice which are in accord with the will and law of God. Over the last two generations, God in his providence has seen fit to bless us with a particularly robust number of men who have been given the call to defend His righteous and just statutes. It is only from a devout and fervent desire to see this necessary work grow and develop that I submit these humble petitions.

One of the men who has proven to be a most dedicated and sound defender of our Lord's revealed directives for righteous governance has been Dr. Joel McDurmon. Doubtless everyone who reads this will have been, at some point, profoundly impacted by Dr. McDurmon's many works on the topics of apologetics, biblical law, eschatology, and epistemology; and his generosity in providing most of his works for free online has only served to make his impact and accessibility so much more apparent. Recognizing these things, it can only be with a spirit of humility and brotherly exhortation that I now present this criticism of Dr. McDurmon's several theses regarding the application of certain elements and aspects of Biblical law as presented in his 2016 publication, *The Bounds of Love: An Introduction to God's Law of Liberty*.

Specifically, I should like to give a further examination and counter-argument to his thesis regarding the *Cherem Principle* and its alleged relation to "First Table" offenses, and his Seed Law theory and its connection to adultery and land inheritance. Dr. McDurmon's recent writings provide a new perspective on these issues, and he himself has admitted that his conclusions are a break with historic and traditional Reformed interpretations. Thus it seems only right that a certain amount of background should be given here before his theses can be duly and properly evaluated.

Before we begin, it seems prudent to direct the reader's attention to the spirit which should always preside over any disagreement or debate between Christian brethren. That spirit should be one of charity and humility toward those who disagree with us. The wise Christian should always remember that it is only as a body, as a collaborative group, that we can properly hold and maintain the true Christian faith.

John Frame, a man known for his charity and graciousness, gives a concise recommendation when he tells us that many of our disagreements and contentions could be avoided if "theologians showed a bit more love toward their opponents and their readers, a bit more humility about their own level of knowledge, a bit more indulgence in pursuing the truth, a little more simple fairness and honesty."<sup>1</sup>

He then summarizes several ways in which unnecessary misunderstanding and animosity can be brought into a situation, he begins with one of the worst: "the practice of taking an opponent's view in the worst possible sense, without first seeking to find a way of interpreting him so that his view is more plausible or even correct."<sup>2</sup>

Further down he tells us that, "In expounding his opponent's views, the theologian may present only the most controversial or objectionable features of his opponent's position,"<sup>3</sup> thus pretending that his opponent is making a less cogent or orthodox case than he actually is. And one last significant deficiency which Frame cautions us to avoid is to "correctly identify a weakness in the view of another but ... play that weakness for far more than it is really worth."<sup>4</sup>

Healthy and often spirited debate is one of the primary methods of advancing the cause of truth in any age. With this I have no problem, yet there is too often today a spirit of contention for contention's sake which tends to detract from the meaningful conclusions that might otherwise be drawn from conversation and even disagreement. This is a very wearying reality and I hope to both avoid and transcend this attitude in the publication of these petitions. With love and sincerity,

Robert J. Hoyle

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<sup>1</sup> John Frame, *The Doctrine of the Knowledge of God* (Phillipsburg, New Jersey: Presbyterian and Reformed Publishing Company, 1987) p. 324

<sup>2</sup> *Ibid*, p. 324

<sup>3</sup> *Ibid*, p.325

<sup>4</sup> *Ibid*, p.327

## ***Cherem and the Purpose of Law***

To begin his work on God's law, Dr. McDurmon introduces the reader to the historic division of Old Testament law into three sections: ceremonial, judicial (or civil), and moral. He then challenges the traditional separation of judicial/civil and moral commands, saying that "the commandment against murder is certainly moral, but it also certainly has civil ramifications. We ought therefore to inquire of the converse, and we will find that virtually all of the civil side of the equation is just as much moral as it is civil – including the level of punishment described."<sup>5</sup>

This means that every moral crime, by nature of its being a crime, has civil ramifications (prescribed punishments from the magistrate) which are also spelled out by Scripture. On this point I totally concur with Dr. McDurmon. The connection between any act which transgresses the law, and the punishment thereof, cannot be broken. If God has declared some act (such as theft or murder) to be a crime, He has not then merely left man to his own devices to discern how this crime ought to be punished.

Furthermore, God's revealed Word not only communicates to us what actions He hates and expects to be punished by the duly invested authorities (whether they be familial, ecclesiastical, or civil) but also how those illegal actions are to be punished. That this theme of revealed law and justice is a prominent one throughout Scripture cannot be denied, for Jesus Himself tells us that:

*Till heaven and earth perish, one jot or one tittle of the Law shall not escape, till all things be fulfilled. Whosoever therefore shall break one of these least commandments, and teach men so, he shall be called the least in the kingdom of heaven: but whosoever shall observe and teach them, the same shall be called great in the kingdom of heaven.*<sup>6</sup>

The thrust of Christ's message here is that His law is eternal and binding. For men to abridge or forego any "jot or tittle" of it without express Biblical warrant is a grave offense. This gives us a rule of interpretation by which we may evaluate any point of continuity or abridgment in God's law.

Protestants have always held that the *ceremonial* aspects of Old Testament law have now passed away. The Scriptures plainly tell us that observance of days, washings, and keeping of feasts held a temporary position until their realization, Christ, arrived. However, there has been continuous debate as to what extent the moral and judicial elements remain. One side claims that almost no

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<sup>5</sup> Dr. Joel McDurmon, *The Bounds of Love: An Introduction to God's Law of Liberty* (Braselton, GA: American Vision, inc, 2016) ch. 2

<sup>6</sup> Matt. 5:18-19

continuity exists between New Testament moral commands and the Old Covenant law, while more conservative theologians argue for a great deal of continuity between Older and New Testament law.

The chief aspect of law which we must always keep before us is its unavoidable religious underpinnings. There is a great deal of confusion among many Christians today about the validity of inherently religious, and especially Christian, law. Listening to the political commentators and historians who guide much of the thought in the United States, one would come to the conclusion that the ultimate standard for law is one of total objectivity and neutrality toward any religion.

The elephant in the room which this “neutral” or pluralist view overlooks is the inescapably religious nature of law itself. Law must always be derived from some source; there must be a foundation for the standards and statutes which will govern a society. That source will always be the god of that society. Amidst their torrent of cries for toleration, humanists themselves reveal a dogged intolerance toward any law code which has even a faint whiff of Christianity.

Why is it that seemingly every non-Christian faction works to see its laws implemented while Christians are left calling for fairness and objectivity? Why can't all the parties agree to play nice? Christians look back to the “good-ole days” when our enemies played nice and everyone could be religiously “neutral” when it came to politics and governing the nations. The wake-up call for Christians today is that those “good-ole days” never actually existed! *For what partnership has righteousness with lawlessness?*<sup>7</sup> Paul asks. For Christians, the source of law is not some innate common sense in man or the general consensus or common will of the people. Instead, it is the revealed will of God, His Word and the law it contains.

God's law is the terms of His covenant treaty. God is a conquering warrior and His law is the standard by which He demands that His people live and govern themselves. Thus the law, whether it be a law which we commonly classify as moral, such as *You shall not covet*<sup>8</sup>, or civil, *Whoever strikes a man so that he dies shall be put to death*<sup>9</sup>, serves the purpose of protecting the people from the wrath of God. Being holy, God cannot tolerate a society which tramples upon His righteous expectations and standards. He will visit judgment upon them. He commands us, *“Be ye holy, for I the Lord your God am holy.”*<sup>10</sup>

This command repeats itself in Scripture and it is the underlying theme of Biblical law. Law is designed not to save us from our sins, for it is not the instrument of justification. It was believing erroneously in salvation by the law which merited Jesus' continued rebuttals of the Pharisees and

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<sup>7</sup> 1 Cor. 6:14

<sup>8</sup> Ex. 20:17; Deut. 5:21

<sup>9</sup> Ex. 21:12

<sup>10</sup> Lev. 11:44, 19:2, 20:7; 1 Pet. 1:16

Jewish culture in His day. However, law does reveal the standard by which God expects us to live, as individuals, as a church, and as a nation. Christ's atoning work purchases our forgiveness for when we do fall short of God's law, and fall short all men do. That does not mean we are not to try, but rather that we must run the race with endurance!

So we see that law is treaty, God's hook in the jaws of the nations so-to-speak. If they break God's law, He will destroy them. If they obey God's law, He will bless them. It's a simple proposition. Rushdoony comments on the concept of the law as the terms of God's covenant treaty when he tells us:

Law is in every culture religious in origin. Because law governs man and society, because it establishes and declares the meaning of justice and righteousness, law is inescapably religious, in that it establishes in practical fashion the ultimate concerns of a culture. Accordingly, a fundamental and necessary premise in any and every study of law must be, first, a recognition of this religious nature of law.

Second, it must be recognized that in any culture the source of law is the god of that society ... Third, in any society, any change of law is an explicit or implicit change of religion. Nothing more clearly reveals, in fact, the religious change in a society than a legal revolution. When the legal foundations shift from Biblical law to humanism, it means that the society now draws its vitality and power from humanism, not from Christian theism.<sup>11</sup>

This is an important point for us to bear in mind: any change away from God's clearly revealed law order is an act of revolution against God, and thus the introduction, whether implicit or explicit, of some other religious source for law. God's covenant is a like a peace treaty with man and His law is a plain publication of the things which we must not do to avoid His vengeance and keep the covenant. To stray to another law code is to stray from God Himself, break His "treaty", and ultimately reveal that a new religion has supplanted our professed Christianity. Christians would do well to keep that in mind as they survey the world around them and the problems that we face in society. If we accept laws and standards of justice which run contrary to what the Bible tells us God demands, we must brace ourselves for God's judgment.

Understanding that God's law is a divine revelation toward a covenanted nation, the second big point we must remember about law is that it is exclusive and at war with any other law code. Any law system is going to be explicitly at war with all other law orders. There can be no neutrality between Sharia law and Humanistic law. There can be no neutrality between English Common Law as theorized by Edmund Burke or John Locke and Christian law as spelled out in

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<sup>11</sup> R. J. Rushdoony, *Institutes of Biblical Law* (The Presbyterian and Reformed Publishing Company: Copyright 1973) pp, 4-5

Scripture. Now, they may share some “common ground,” as this is almost unavoidable, but there is no neutrality.

Every system of law has a differing source and standard and thus there can be no neutrality amongst them. Rushdoony again neatly summarizes the idea of the inherent antagonism of every law system to all other law systems:

Fourth, no disestablishment of religion as such is possible in any society. A church can be disestablished, and a particular religion can be supplanted by another, but the change is simply to another religion. Since the foundations of law are inescapably religious, no society exists without religious foundations or without a law-system which codifies the morality of its religion.

Fifth, there can be no tolerance in a law-system for another religion. Toleration is a device used to introduce a new law-system as a prelude to a new intolerance. Legal positivism, a humanistic faith, has been savage in its hostility to the Biblical law-system and has claimed to be an “open” system ... Every law-system must maintain its existence by hostility to every other law-system and to alien religious foundations or else it commits suicide.<sup>12</sup>

As can be seen, these two points go hand in hand. For the society or the individual chosen by God to be His own, His law is the terms of His treaty of peace. For the individual or society which perseveres in hardness of heart and apostasy, the law contains God’s declaration of war against them. God’s law is the basis of the ethical/judicial warfare that exists between covenant keepers and covenant breakers within history.

In this way the law is also a dividing line, a form of separation between righteousness and wickedness; between lawful obedience and lawlessness. The course of history is the progressive ethical separation of the elect and the reprobate. Wheat becomes more “wheat-like” and tares become more “tare-like”.<sup>13</sup> It is this idea of law as the standard of separation which introduces us to the idea of “*cherem*,” and *Cherem* law.

*Cherem*, like most Hebrew words can carry a few different meanings over into English. Strong’s concordance defines it thus: “to seclude; specifically (by a ban) to devote to religious uses (especially destruction); physical and reflexive, to be blunt as to the nose; make accursed, consecrate, (utterly destroy), devote, forfeit, have a flat nose, utterly (slay, make away).”

We see *cherem* employed when God commanded Joshua to destroy Jericho. The entire city was to be placed under the ban—utterly destroyed—and thus the word *cherem* is used. In Judges 1:17

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<sup>12</sup> Ibid. pp. 5-6

<sup>13</sup> Matt. 13:24-30

we are told that Judah and Simeon utterly destroyed (*cherem*) the Canaanites dwelling in Zephath. The *cherem* theme of all law is that law is a form of separation between God's people and rebellious mankind. For the Hebrews settling in a new land, the law was a tool of separation.

The whole law implied that separation by declaring that wickedness was to be *cherem*, or devoted to separation and destruction. The covenant keeping Israelites were not to tolerate covenant breaking actions within their midst. To do so was an illegitimate mixture of clean and unclean and was explicit treason against God's law order.

The same is true of us today. The law still contains the *Cherem* Principle today in that it pronounces God's total intolerance of covenant breaking actions and demands that God's people be separate from such wickedness. There must always be a legal and ethical distinction between covenant keeping and covenant breaking. This principle of separation is given full manifestation by the law's "*cherem*" nature. Dr. Joseph Morecraft, III comments ably on *cherem* in his study of Jericho's destruction:

Toleration of evil in ourselves, our homes, our churches, our schools, our businesses, our courts, our communities, and our nations is intolerable, and displeasing to God. A society that tolerates evil collapses under the righteous judgment and anger of the God who "hates all workers of iniquity." Good and evil cannot peacefully co-exist. They are arch-enemies always out to destroy the other. Religious and ethical pluralism in a society are impossibilities – one religion and ethics will prevail over the other.

In our American culture, the issue is not WHETHER religion and ethics will influence and dominate culture, but WHICH religion and ethics will dominate culture: biblical Christianity or some form of anti-Christianity ... Because Jehovah is a God who separates his people from the pagan world by his Covenant Law and Promises, separation is not only a basic element of salvation, it is also a basic principle of biblical law with respect to religion, morality, and society.

As R. J. Rushdoony has written: "Every attempt to destroy this principle is an effort to reduce society to its lowest common denominator. TOLERATION is the excuse under which this leveling is undertaken, but the concept of toleration conceals a radical intolerance. In the name of toleration, the believer is asked to associate on a common level of total acceptance with the atheist, the pervert, the criminal, and the adherents of other religions as though no differences existed.

The believer has a duty of lawful behavior toward all, an obligation to manifest grace and charity where it is due, but not to deny the validity of the differences which separate believer and unbeliever, (Israelite and Canaanite). In the name of toleration, the believer is asked to tolerate all things because the unbeliever will tolerate nothing: it means life on the unbeliever's terms. It means that biblical order is denied existence, because all things must be leveled downward. The basic premise of the modern doctrine of toleration is that



all religious and moral positions are equally true and equally false. In brief, this toleration rests on a radical relativism and humanism.<sup>14</sup>

Dr. Morecraft reiterates for us in concise form all that I have been trying to convey. The law is the terms of God's treaty with man, the law is a declaration of war against evil, and the law is a standard of separation between righteousness and wickedness. As assuredly as God's "called out ones," or *ekklesia*, are called out, they are called unto something. Not called unto nothing, or unto something which is just a baptized form of what the world is practicing. God has a radically different plan for His chosen people; a difference realized ultimately in heaven and hell.

In history, these two people groups are always called to separation: in religion, in worship, and in law. One group is consecrated to life and the other consecrated to destruction. This consecration is the embodiment of *cherem*, and it is with this understanding of the "*Cherem* Principle" that we shall next examine Dr. McDurmon's unique thesis.

### **Dr. McDurmon on Cherem**

Over against the fundamental characteristic of law as a tool of separation we previously found that Dr. McDurmon posits a new perspective, which he labels the "*Cherem* Principle." For the purposes of his thesis, Dr. McDurmon equates *cherem*, or the *Cherem* Principle, with certain elements of Biblical law which he proposes have now been revoked from earthly enforcement.

He says, "*Cherem* is peculiar to the Old Testament administration because it functioned only in the context where God's presence was in the physical temple/tabernacle, in the altar fire, the land itself was holy and was an agent of sanctions, and the inheritance of God's covenant promises was through blood descent and external possession of the Holy Land. As we have seen, all of these realities have been drastically altered by the New Testament economy. The civil penalties based upon the *Cherem* Principle must be considered in this light as well."<sup>15</sup>

Moving from this position, Dr. McDurmon directly relates the first four commandments of the Decalogue, commonly grouped together as the First Table, as well as the Fifth and Seventh Commandments, to the *Cherem* Principle and then declares them to have either reduced or removed civil sanctions in the New Covenant era.

He says, "It is my conclusion that civil governments no longer have authority to apply *cherem* punishments in the New Covenant. So which laws does this cover? In general, these are all First

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<sup>14</sup> Dr. Joseph Morecraft III, *Joshua: Taking Possession of Our Inheritance* (unpublished study guide) pp. 111-112 (emphasis in original)

<sup>15</sup> Dr. McDurmon, *Bounds of Love*: ch. 3

Table offenses: false worship, apostasy, idolatry . . . The *cherem* principle indicates that certain other death penalties related to the First Table would also no longer apply. It would include laws relating directly to inheritance in the land, even when it crosses into family matters.”<sup>16</sup>

And further down he adds, “We cannot stress enough how intricately God’s *cherem* presence was tied to the priestly, temple, land, separation and inheritance laws . . . There are other death penalties involved in such overlap as well. These include the death penalty for certain types of adultery as well as bestiality and homosexual sodomy.”<sup>17</sup>

The crux of Dr. McDurmon’s thesis is that any “*cherem*” elements of the law indicate a temporary increase in severity of punishment because of their supposedly symbolic nature. In his study of the Hebrew term *cherem*, he shows that it was a devotion to total destruction. With this I have no qualms. However, his selection of just what is and what isn’t *cherem* law is rather arbitrary and the conclusion reached - that any laws which he chooses to connect with *cherem* are now rescinded from civil enforcement—is a conclusion which has precious little Biblical support and less or even no historical precedent.

This being as it is, Dr. McDurmon’s “*Cherem Principle*” is largely a thesis, or more accurately a series of intertwining theses, which still need a great deal of refining work. It should be noted here that the burden of proof lies with Dr. McDurmon throughout.

Rather than view *cherem* as a component of the legal barrier which exists between that which God has called unto Himself (holy) and that which He has purposed for destruction, Dr. McDurmon founds his “*Cherem Principle*” on the idea that a greater standard of holiness was demanded by God while His physical presence continued in the temple, while the holy land was the direct object of sanctions, and while inheritance was of directly physical descent. Thus, since these three things no longer hold true, the *Cherem Principle* has passed away.

“Why this change?” Dr. McDurmon asks. He answers for us: “The discontinuity encountered in regards to the *cherem* principle is directly related to the difference in nature of the Old Covenant compared to the New.”<sup>18</sup> Note here that by classifying only certain laws as *cherem* and by further claiming that the enforcement of these laws was of typical administration and therefore temporary, Dr. McDurmon is quietly denying the law one of its fundamental qualities.

If, as we saw earlier, *cherem* embodies the separation which God sets down between His called out people and the sons of perdition, then all of Biblical law invokes the *Cherem Principle*. It is the law which places all wickedness under the curse, or ban. It is the law (and more particularly

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<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

obedience to the law through faith in Christ) which shows God's righteous rule over those whom He has devoted unto Himself.

The point which we must remember is that the law has an inescapable characteristic of devotedness. Every person that lives, has lived, or ever will live, is either devoted to righteousness in Christ (Christ's imputed righteousness made possible by Christ's perfect law-keeping) or devoted to destruction under the curse of the law's sanctions against unrighteousness. The concept of "no neutrality" is an inescapable fact of law. By attempting to limit the scope in which *cherem* manifests itself within Biblical law, Dr. McDurmon is fundamentally altering the very nature of the law.

In conclusion, Dr. McDurmon sees *cherem* as being connected to three things: the "altar fire presence" of the Spirit of the Lord in the Temple/Tabernacle, the continuation of an undefiled seed within Israel, and the perpetuation of the inheritance of the land from one generation to the next. Next we will examine the veracity of this claim and the arguments made for the cessation of earthly enforcement of these laws.

### **A Ministry of Death?**

*The discontinuity encountered in regards to the cherem principle is directly related to the difference in nature of the Old Covenant compared to the New.*

Dr. Joel McDurmon – *Bounds of Love*

One of the first premises of Dr. McDurmon's argument is that the earthly enforcement of *cherem* laws is inseparably linked to specifically Old Covenant circumstance.<sup>19</sup>

Before focusing directly upon Dr. McDurmon's abrogation hermeneutic, I want to point out two things concerning the three major Old Covenant circumstances (temple presence, land laws, bloodline inheritance) which purportedly occasioned the temporary installment of the *Cherem* Principle.

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<sup>19</sup> When I say that Dr. McDurmon speaks of these laws having passed away, I must remind the reader that he speaks of only the earthly enforcement of these laws at the hand of the civil magistrate. Dr. McDurmon still holds that these actions are violating God's commands and warrant His judgment, but that the judgment will be handed down directly from heaven instead of the indirect use of the civil magistrate as the agent of God's wrath. As we shall see later on, this presents major problems for Dr. McDurmon's thesis.

The *first* is that the Bible itself never explicitly connects the dispensation and jurisdiction of its own civil law code to God's presence in the temple, the preservation of the seed, or the physical inheritance of the land.

We read that God demands holiness of His people for His own holiness' sake, but there is no mention of Dr. McDurmon's three points. In order for one to "arrive" at the conclusion that these circumstances are what led to the temporary establishment of *cherem* law, there must be a great deal read back into the text. Dr. McDurmon, as has been pointed out, posits an altered, or rather redefined, idea of what *cherem* law fundamentally is.

*Second*, if God's consuming presence in the Holy of Holies is what gave rise to the demand for such stringent standards, why aren't the standards even higher today? We are told in the Acts of the Apostles that at Pentecost, "*suddenly there came from heaven a sound like a mighty rushing wind, and it filled the entire house where they were sitting. And divided tongues as of fire appeared to them and rested on each one of them. And they were all filled with the Holy Spirit ...*"<sup>20</sup>

Furthermore we know that our "*body is a temple of the Holy Spirit within you, whom you have from God.*"<sup>21</sup> So while it is true that God's direct presence is no longer upon the Ark within the inner sanctum of the physical temple, His presence is much more diffused throughout the world and in a much more direct way. As the new and greater temple, Christ's Church carries God's presence throughout the world and His consuming presence indwells them directly. It seems odd that God would institute a higher standard for society in a day when His Spirit remained within the center of the temple than in a day where He directly inhabits millions upon millions of people all over the earth. Certainly the consuming presence of the Lord is felt much more today than it ever was under the Older Covenant.

Building from the view of a higher standard for societal righteousness in the Old Covenant era, Dr. McDurmon continuously states that the *cherem* laws demanded immediate destruction. This is a bit of a red herring on Dr. McDurmon's part as no such claims are made by the Scriptures themselves. Putting aside any disagreements with Dr. McDurmon's seemingly inconsistent allotment of just what is and isn't *cherem* law, even the laws which he narrows down as *cherem* do not specify immediacy in any way. In fact one of the case laws which he cites as a *Cherem* Principle violation expressly says the following:

*And it is told you and you hear of it, then you shall inquire diligently, and if it is true and certain that such an abomination has been done in Israel, then you shall bring out to your gates that man or woman who has done this evil thing, and you shall stone that man*

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<sup>20</sup> Acts 2:2-4

<sup>21</sup> 1 Cor. 6:19

*or woman to death with stones. On the evidence of two witnesses or of three witnesses the one who is to die shall be put to death; a person shall not be put to death on the evidence of one witness. The hand of the witnesses shall be first against him to put him to death, and afterward the hand of all the people. So you shall purge the evil from your midst.*<sup>22</sup>

Note here that before anyone is put to death witnesses must be summoned, a verdict handed out, and a sentence pronounced. The description given is that of a regular court hearing, and like all court trials, it would seem to be a lengthy and involved process. To further complicate matters, this passage says that in this affair, the witnesses must be willing to cast the first stones. This would serve to eliminate false witnesses or even timid honest ones, as many men would shy away from engaging in the actual execution. For the judges in Israel to find multiple witnesses who would obey God by partaking in the actual act of removing the evil influence -- not just giving a testimony -- could take a great deal of time. The connection of *cherem* to immediacy in verdict needs to be dropped.

A second exaggeration coming from Dr. McDurmon is his claim that the passage previously cited (Deut. 17), if applied today, “would seem to require the death penalty for merely leaving the Christian faith. A simple apostate would, under the strict application of this passage, be required to die at the hands of the State.”<sup>23</sup> In opposition to these assertions, the Bible never demands men be punished by the magistrate for their personal beliefs or in-home religious practices. The proscription is against proselytizing. Under Biblical law, men are free to believe whatever they wish, as God never allows the State to pass judgments based upon its evaluation of men’s hearts and minds. What the Bible *does* forbid is for apostates to publicly proselytize within the community.

Consider Deuteronomy 13:

*If your brother, the son of your mother, or your son or your daughter or the wife you embrace or your friend who is as your own soul entices you secretly, saying, ‘Let us go and serve other gods,’ which neither you nor your fathers have known, some of the gods of the peoples all around you, whether near you or far off from you, from the one end of the earth to the other, you shall not yield to him or listen to him, nor shall your eye pity him, nor shall you spare him, nor shall you conceal him. But you shall kill him, your hand shall be first against him to put him to death, and afterward the hand of all the people ... If you hear in one of your cities, which the Lord your God is giving you to dwell there, that certain worthless fellows have gone out among you and have drawn away the inhabitants of their city, saying, ‘Let us go and serve other gods,’ which you have not known, then you shall inquire and make search and ask diligently. And behold, if it be true and certain that such an abomination has been done among you, you shall*

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<sup>22</sup> Deut. 17:4-7

<sup>23</sup> Dr. McDurmon, *Bounds of Love*: ch. 3

*surely put the inhabitants of that city to the sword, devoting it to destruction, all who are in it and its cattle, with the edge of the sword.*<sup>24</sup>

This passage makes clear that although the wicked act was turning away from the Lord, the thing which must be punished by the magistrate was the proselytizing, the attempts to lead others away from the Lord also. A nation ruled by God's law is not a nation which engages in constant inquisition so as to "ensure" the spiritual estate of every citizen. The Bible makes this very clear and Dr. McDurmon's intimations to the contrary reveal a presupposition concerning the Old Covenant that colors his whole perspective. This underlying attitude, prevalent throughout his book, comes to the forefront in the following statements:

The law continues, as we have noted already, but it is now written on the minds and hearts of God's people, not merely on stones and books. It is that the New Covenant is administered by the Spirit, from heaven, not from the letter on earth. It is also marked by permanence: whereas the Israelites broke the Old Covenant and God cast them away for it, this New Covenant is wrought by God Himself in our hearts and cannot be broken. It is also marked by general forgiveness as opposed to the call for immediate *cherem* death.

And after citing from 2 Corinthians 3 he concludes:

This is hardly to say that the law in its entirety is brought to an end, but to show the difference in the nature of the two covenants and their administrations. The first was a ministry of the letter and death, the latter a ministry of the Spirit and life.<sup>25</sup>

We can all agree with Dr. McDurmon that the New Covenant has certain and definite advantages over the Old, yet in order for him to posit his abridgment theory, he must advance the idea that the removal of any civil enforcement of *cherem* law is one such advantage. It should be noted that the repetition of the objectionable claim that the Old Covenant called for "immediate *cherem* death" reappears in the quote above, but of more importance is Dr. McDurmon's more comprehensive view of the Old Covenant.

He specifically defines it as a ministry of death and says that it was administered by the letter on earth. This is a characterization of the Old Covenant which any good covenantalist, especially one of a theonomic and postmillennial strand such as Dr. McDurmon, should not be enthusiastic about to say the least. Whether properly understood today or not, the Old Testament era is still part of the greater Covenant of Grace. It is by no means a "ministry of death" and it cannot be so heavily separated from the New Covenant without doing damage to several rules of interpreting the Scriptures. The Westminster Confession of Faith warns against finding such radical discontinuity within the covenant structure,

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<sup>24</sup> Deut. 13:6-9,12-15

<sup>25</sup> Dr. McDurmon, *Bounds of Love*: ch.3

There are not, therefore, two covenants of grace differing in substance, but one and the same under various dispensations.<sup>26</sup>

We may attempt to compare and contrast the different administrative eras of redemptive history in a variety of fashions, but they may not be set at odds with one another. Any and all of the eras of covenant history are a part of God's greater Covenant of Grace which was set forth after the fall of man. Each differing era of covenant dispensation is a part or segment of the overall Covenant of Grace and to refer to any aspect of that life-promising, life-giving covenant as a "ministry of death" is inconsistent.

Furthermore, if we carefully examine the New Testament statements from which Dr. McDurmon draws, we may come to see that they do not teach us to look at the Old Covenant as opposed to the New but rather the Old Covenant progresses continuously toward the glorious unveiling of the New Covenant. Roderick Campbell gives us a useful rule of interpretation for evaluating statements in the New Testament that seem to set the Old and New Covenants in opposition:

Neither Jesus nor Paul intended to minimize the written or spoken word. No! it is not the word inscribed on stone or the spoken word shouted from the housetops that is the killing letter; but it is the word, whether Law or gospel, when not received in faith and love and when it does not produce the intended effects in heart and life. It is not the Law, whether of Moses or Christ, that kills; it is the neglect of the Law which is designed to lead men to Christ, and the neglect of the gospel which is the infallible remedy for the transgressor of the Law . . . When Paul is contrasting "the letter" with "the spirit" (2 Cor. 3:6), he has in view the preaching or the hearing of the word when it is not accompanied with the quickening and illuminating influence of the Holy Spirit, or when it does not produce the appropriate effects.<sup>27</sup>

The contrast between a ministry of letter and of death and the ministry of the spirit and of life is not a contrast between the Old and New Covenants but between the proper and improper uses of the law (1 Tim. 1:8). If the law is viewed as a means to salvation then it is always a ministration of death, whether in the Old Testament or the New. But when given its proper pedagogical place and accompanied by the Spirit of the Lord, it is always "*holy, just, and good*."<sup>28</sup> In commenting on 2 Corinthians 3, Dr. Bahnsen concurs: "Paul does not despise the

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<sup>26</sup> 1647 Westminster Confession of Faith, Ch. 7, S. 6

<sup>27</sup> Roderick Campbell, *Israel and the New Covenant* (Philadelphia, PA: The Presbyterian and Reformed Publishing Company, copyright 1954) p. 47

<sup>28</sup> Rom. 7:12 (from 1599 Geneva) -- Romans 7 speaks directly to this issue and Paul argues that the law is spiritual (v. 14) but because of our sinful carnality it kills us. The defect here does not belong unto the Law of God, but our fallen nature.

law, but exposes the error of exalting the law at the expense of the more glorious gospel ... The fault lies with law breaking, not the law itself.”<sup>29</sup>

### **Argument from Silence: Dr. McDurmon’s Abridgment Theory**

Be all these things as they may, Dr. McDurmon’s thesis centrally hinges upon the fact that what he is defining as *cherem* law is specifically abrogated in its civil enforcement by the coming of the New Covenant. The reader familiar with Dr. McDurmon’s work will note that he himself told us, when speaking of the hermeneutics of continuity, that we must be careful in our exegetical method. Merely the fact that the New Testament does not repeat a specific law (or even mention it in one way or the other) may not be taken to assume that law’s abrogation. The Christian’s rule of interpretation must be Christ’s own words from Matthew 5:18: “*Not one jot or tittle shall pass away.*”

The passage of Scripture which gives us the clearest picture of exactly which laws belong to the abrogated aspects of the Older Covenant is Hebrews 8-10. In particular Hebrews 9, in dealing with the provisional and thus temporary aspects of the Older Testament, tells us plainly that through these very things,

*By this the Holy Spirit indicates that the way into the holy places is not yet opened as long as the first section is still standing (which is symbolic for the present age). According to this arrangement, gifts and sacrifices are offered that cannot perfect the conscience of the worshipper, but deal only with food and drink and various washings, regulations for the body imposed until the time of reformation.*<sup>30</sup>

The message here is a clear one: ordinances of meat and drink, divers washings, and carnal rites served a pedagogical purpose until the incarnation of our Lord. Now that the fullness of glory has been revealed, these shadows need not remain. Christ, the long awaited King, Servant, Messiah, and Savior has come and now the Holy Spirit indwells the Chosen People even as it once resided only within the inner sanctum of the temple.

These are the ways in which the New Covenant is “*not like unto the Old.*” To push the meaning of this passage from Hebrews further than this is to open the door to a dangerously wide variety of potential meanings. Yet, despite the inherent dangers, this is precisely what Dr. McDurmon does. When defining his central thesis as to the difference between the Old Covenant and the New, he cites Hebrews 8:8-12.

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<sup>29</sup>Dr. Greg L. Bahnsen, *Theonomy*: p. 221 (emphasis in original)

<sup>30</sup> Heb. 9:8-10



Now, Dr. McDurmon appeals to this passage as the clear biblical grounds for the abrogation of *cherem* law in the New Covenant. There is one rather large problem with this use of Hebrews to support his claims: the text itself pinpoints the Old Covenant laws it has in view and Dr. McDurmon's *Cherem* Principle is nowhere to be seen. When writing to his Jewish audience, the author of the book of Hebrews was more than careful to spell out the points of discontinuity between the Older and New Covenants and their administrations.

As a rule of interpretation, it should be noted that when the Apostolic epistles address primarily Gentile audiences (such as Romans and 1 Timothy, and especially such passages as Romans 3:30-31, Romans 7:7,12-14, and 1 Timothy 1:8-11) the authors are careful to stress the holy and persisting natures of Old Testament law and when they address a primarily Jewish audience and when they address the points of abrogation and differences between the Older and New Covenants.

The reason for this should be apparent. Both Jews and Gentiles struggled with the law in different ways. Jews struggled to understand the ways in which Christ superseded the temporary administrative elements of the Older Covenant -- laws which we Protestants have generally classified as ceremonial. Their problem was not antinomianism (against the law) but rather legalism.

The Jewish members of the first century Church generally assumed total legal continuity between the two covenant administrations. One of the primary goals for the book of Hebrews was to correct them in this belief. But for our present purposes what we must bear in mind is that every point of Older Testament law which is not specifically addressed and repealed here by this letter the recipients would have assumed to be still binding.

That they stopped far short of finding Dr. McDurmon's abridgment of the "*Cherem* principle" here is evidenced by the fact that Dr. McDurmon is the first scholar in Christian history to advance his thesis. The danger in grounding an argument in favor of "differences" in the covenant eras which is not directly contained in the text itself -- an argument from silence -- is that the argument can be made to go anywhere.

Dr. McDurmon seeks to posit that one of the differences between the Old and New Covenants is the civil enforcement of his *Cherem* Principle, but the door he opens here by not citing any direct passage to support his thesis is a door that any scholar could walk through. Utilizing Dr. McDurmon's hermeneutic, another interpreter could argue that McDurmon didn't go far enough—that in fact the New Covenant is a total nullification of Old Testament law. If we do not limit our own definitions of covenantal discontinuity to that which the Bible expressly lays out, then we open it up to an incredibly wide spectrum of potential meaning.

Furthermore, that the author of the epistle to the Hebrews expected the people to assume continuity in matters upon which he does not touch cannot be denied as he twice appeals directly to the Old Covenant law in order to establish the severity of ignoring this word from God:

*Therefore we must pay much closer attention to what we have heard, lest we drift away from it. For since the message declared by angels proved to be reliable, and every transgression or disobedience received a just retribution, how shall we escape if we neglect such a great salvation?<sup>31</sup>*

And a little later he adds,

*For if we go on sinning deliberately after receiving the knowledge of the truth, there no longer remains a sacrifice for sins, but a fearful expectation of judgment, and a fury of fire that will consume the adversaries. Anyone who has set aside the law of Moses dies without mercy on the evidence of two or three witnesses. How much worse punishment, do you think, will be deserved by the one who has trampled underfoot the Son of God, and has profaned the blood of the covenant?<sup>32</sup>*

The Apostle is here arguing a fortiori. If someone deserves punishment for breaking the covenant in the Old Testament, then of course they can expect even worse for breaking the New Testament. If we remove the first premise in the Apostle's logical progression, the entire line of reasoning collapses. But this is exactly what Dr. McDurmon does when he appeals to Hebrews 10:26-29 as support for his abridgment theory. He writes:

Keep in mind, the author was writing to Hebrews about the change from Old Covenant to New Covenant under Christ. The issue here would have been mass apostasy. The Hebrews who remained in unbelief after Christ would have been committing idolatry (false temple worship) and apostasy (denial that Christ has come in the flesh). Under the Mosaic administration, they would have been devoted to destruction (Ex. 22:20; Deut. 13; 17:2-5) by the civil government. The author of Hebrews acknowledges this. Yet he does not prescribe a cherem death penalty administered by the civil government. He prescribes an even worse judgment that will come from the throne of grace.<sup>33</sup>

Dr. McDurmon here takes the argument made by the author of Hebrews and turns it on its head. Over against this interpretation of the passage at hand we may consider the words of Dr. Greg Bahnsen:

The punishment of the apostate under the new order is much sorer than under the old, and the equity of this terrifying judgment under the New Covenant is established by appeal to the Older Covenant law (read Heb. 10:26-29) – thereby assuming its foundational validity. Since the New Covenant brings with it further and worse punishment, we

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<sup>31</sup> Heb. 2:2-3

<sup>32</sup> Heb. 10:26-29

<sup>33</sup> Dr. McDurmon, *Bounds of Love*: ch. 3

certainly should not see a turning back from the judicial tone, the law and penal sanction, of the Older Covenant. To the contrary, there is an intensification of it!<sup>34</sup>

“To the contrary,” Dr. Bahnsen tells Dr. McDurmon, the Apostle’s appeal to Old Covenant law underscores its abiding validity both morally and in the penal sense. If the foundation for the proscription of punishment be here removed, what promise have we of judgment? Clearly, the context to which Dr. McDurmon attempts to fit these passages from Hebrews is not their natural or Biblical setting.

### 5<sup>th</sup> Commandment

In order to hold his thesis together concerning which laws he has placed under the label of *cherem*, Dr. McDurmon must maintain some rather unusual and tenuous positions regarding the Fifth Commandment. Although placed within the First Table by Dr. McDurmon, the Fifth Commandment has traditionally been viewed as a bridge between the two broader sections of the Decalogue.

When we read the commandment to honor father and mother, the broader implication is to give due honor to all those in positions over us. Of all the various authorities under which a man in this life must live (family, church, state, and ultimately God Himself) the family is the lowest on the chain of command. Thus when we find the death penalty invoked by the law for incorrigible disobedience to parents, the implication is how much less insubordination to the higher authorities will be tolerated. One of the case laws attached to the commandment makes this clear.

Deuteronomy 17:12 says,

*The man who acts presumptuously by not obeying the priest who stands to minister there before the Lord your God, or the judge, that man shall die. So you shall purge the evil from Israel.*

Aside from the obvious fact that a man who needs to come before the priest or magistrate for judgment has already broken the law, the greater sin here is in refusing to hearken unto the sentence handed down in punishment. Not only is the man in view now a criminal, he is doubly dangerous because of his blatant disregard for the way in which God has ordered human society be structured. That this commandment contains its own explanation for the death sentence is telling. It simply demands that the evil be put away from among the covenant people. Rebellion against rightful authority will not be tolerated. God will not have any blatant rebels before Him.

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<sup>34</sup>Dr. Greg L. Bahnsen, *Theonomy in Christian Ethics* (Phillipsburg, New Jersey: Presbyterian and Reformed Publishing Company, copyright 1977) p. 195 (emphasis from original)

It is of note that when commenting on this passage, Calvin speaks of honoring parents only after giving space to proper submissiveness before God, the civil magistrate, and the ecclesiastical authorities. Viewed in this light, it becomes clear why this command is placed where it is; it has a bearing toward our service to God (First Table) and our service to man (Second Table). The most clear case law application of the Fifth Commandment is Deuteronomy 21:18-21, and it upholds the idea that honor and respect is the central focus:

*If a man has a stubborn and rebellious son who will not obey the voice of his father or the voice of his mother, and, though they discipline him, will not listen to them, then his father and his mother shall take hold of him and bring him out to the elders of his city at the gate of the place where he lives, and they shall say to the elders of his city, 'This our son is stubborn and rebellious; he will not obey our voice; he is a glutton and a drunkard.' Then all the men of the city shall stone him to death with stones. So you shall purge the evil from your midst, and all Israel shall hear, and fear.*

As an aside, it bears noting for clarity's sake that the children which Deuteronomy 21 commands to be put to death are not five years old. In fact, it is not talking about minors at all. The passage is dealing with adult sons who are polluting the land with their wickedness and have continually refused to hearken unto the rebukes and chastisements of their parents. Notice the mentioned crimes are drunkenness and public disorderly conduct, not the actions of a child. Parents are commanded to be the first to lay a hand in judgment upon their children for being rebellious parasites on society.

How much easier it is to apply the rod at a young age than to have to give public witness to one's bad parenting by testifying that their own adult and criminal son deserves death at the hand of the civil magistrate? It should also be pointed out that this passage gives its own reason for its inclusion in the law. It has attached at the end, "*and all Israel may hear, and fear.*" The law is again self-interpreting.

Notice there is no mention of the Lord's altar fire presence or land inheritance in either of these case laws. Instead, there is merely a Biblical injunction to remove the evil from society. Any connection to a heightened sense of judgment owed to the Lord's tabernacle presence must be read into the text because we are given no hint that this law is anything more than what it plainly claims to be. Nevertheless, Dr. McDurmon advances his thesis:

... the Fifth Commandment is part of the First Table. It is a general principle but was also directly tied to inheritance in the land. Under Old Testament law, a son would inherit the land by mandate, not by choice of the parents. A rebellious, incorrigible son was therefore a threat. His wicked influence was to be permanently purged "from your midst" (21:21). (Note that this law is not said to apply to daughters, who could be just as wicked

and rebellious, and just as incorrigible, yet could inherit the land only in rare circumstances).<sup>35</sup>

Not only is Dr. McDurmon here reading a great deal into the text which is nowhere plainly stated, but in attempting to interpret this commandment as having to do primarily with inheritance, he violates a fundamental rule of interpreting Biblical law. Biblical case law always works from lesser to greater in application. When a Biblical case law says that a man is responsible for another's injuries in the event of an accident, the inference is how much more is the man responsible if the act which caused harm was intentional. Rushdoony speaks on the 5<sup>th</sup> commandment saying:

Biblical law is case law, and this law does not deal simply with sons. It means that if a son, who is beloved of the parents and an heir, must be denounced in his crime, how much more so other relatives? A family turning over its son to the law will turn over anyone. Thus, daughters were clearly included. The law said, "There shall be no whore of the daughters of Israel, nor a sodomite of the sons of Israel" (Deut. 23:17). "Do not prostitute thy daughter, to cause her to be a whore" (Lev 19:29). The evidence would indicate that no Hebrew girl could become an incorrigible delinquent, and, in periods of law and order, remain alive.<sup>36</sup>

This comment makes it clear that the Fifth Commandment absolutely does apply to daughters just as much as sons. If a family will turn its eldest son, its most prized heir, over to the civil authorities, how much more willing will they be to bring other relatives (such as daughters) to judgment? The principle of moving from the least application of the law upwards toward weightier matters is one of the basic rules of interpreting Biblical case law. If a theory necessitates the removal or ignoring of hard and fast hermeneutical guidelines, that theory almost certainly needs retooling.

As opposed to Dr. McDurmon's assertions, the law applies to all incorrigible rebels who refuse to listen to God-ordained authorities. This is its clear intention and it has always been interpreted as such. Furthermore, Rushdoony gives no indication that this law is today abrogated, in fact he declares that "The law is clear enough; if only the interpreters were as clear!"<sup>37</sup> He then condemns the rabbinic exegetes for attempting to find loopholes in the plain import of this law and likens them unto the Supreme Court of our own land who would attempt to void the obvious implications of every standing law. For the serious student of Biblical law and its application to society, exegetical gymnastics such as this simply won't be satisfactory.

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<sup>35</sup> Dr. McDurmon, *Bounds of Love*: ch. 3

<sup>36</sup> R. J. Rushdoony, *Institutes of Biblical Law* (The Presbyterian and Reformed Publishing Company: Copyright 1973) p. 187

<sup>37</sup> *Ibid.* p.185

## 7<sup>th</sup> Commandment

Having presented our arguments against Dr. McDurmon's handling of the Fifth commandment, let us now advance to the Seventh. Dr. McDurmon begins talking about what he labels the "Seed Laws" (which fall under his greater *Cherem* Principle) in the same fashion he has addressed his other thesis. He says that,

It is easy to conclude that all such sexual sins resulted in the confusion or defilement of the seed, or the defilement of inheritances, and were thus assigned the death penalty on such grounds – not merely on the grounds of their nature as sexual sins. We can tell in each of these cases that the death penalty was invoked not because of the nature of the sin or crime itself, but because it occurred in overlap with these particular sacred boundaries in the Old Covenant administration.<sup>38</sup>

Again, it must be insisted that it would only be "easy" to make certain conclusions regarding the intent of these laws if that intent was plainly stated in the text. And in the case of the supposed "*Cherem* Principle," no such statements are to be found. Only if we accept the hypothesis that the altar fire, the land as a covenant agent, and the immutability of fleshly inheritance conferred a heightened sense of judgment, can we find any evidence that breaking sexual laws is not simply an affront to God's law order in and of itself rather than a violation of *cherem* and thus of temporary import. Dr. McDurmon exegetes Deuteronomy 22:22 and Leviticus 20:10 next to support his claims. These passages read thus:

*If a man is found lying with the wife of another man, both of them shall die, the man who lay with the woman, and the woman. So you shall purge the evil from Israel. (Deut. 22:22)*

*If a man commits adultery with the wife of his neighbor, both the adulterer and the adulteress shall surely be put to death. (Lev. 20:10)*

The demands of this law are clear: the death penalty is applicable to all who commit adultery. However, in order for it to fit into Dr. McDurmon's system, adultery must be seen as a confusion of the seed and not necessarily a civil crime in and of itself. Dr. McDurmon bids us "Consider, for example, the references to adultery just mentioned. One case involves a married man sleeping with a married woman (Lev. 20:10). The other involves any man sleeping with a married woman (Deut 22:22). Each could receive the death penalty. But what of a case between a married man and an unmarried woman? There is no mention of it, although the law regularly specifies when

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<sup>38</sup> Dr. McDurmon *Bounds of Love*: ch. 3

any particular law applies to man, a woman, or both. The silence here is therefore evidence of a non-law.”<sup>39</sup>

In reading this last quotation, one must pause for a moment at the sheerchutzpah with which this statement is put forward. Dr. McDurmon here attempts to convince us that a married man may lawfully have an extramarital affair, as long as his partner is unmarried!

Assuredly Dr. McDurmon would grant that the adulterous act does give the offended spouse the right of divorce, but nevertheless this entire assertion is preposterous. Adultery of any variety falls under the Biblical stipulation that an adulterer be put to death. Biblical law is clear: if an unmarried man has intercourse with an unmarried woman the offending man must pay the girl’s father her bride price and marry her unless the father absolutely refuses the man as a husband for his daughter. If the man is married, he is an adulterer and deserves death.

The simple wording of the general commandment “*Thou shalt not commit adultery*” covers this. To attempt to justify his “exegesis” here, Dr. McDurmon appeals to the Levirate marriage laws and the allowance for polygamy. Neither of these laws, however, have a bearing on the command to abstain from sexual relationships outside of the marriage bond. The polygamist, even as socially unacceptable as his behavior may be, is technically legally married to each of his wives. The Levirate laws were for preserving the priesthood and were thus ceremonial, but even here the man was required to enter into legal marriage with his sister-in-law before cohabitation was legal.

Interestingly, Jesus Himself, when responding to the Pharisees in Mark 10, condemns Dr. McDurmon’s understanding of the laws governing adultery:

*Whoever divorces his wife and marries another commits adultery against her ...*<sup>40</sup>

If a man is committing adultery by divorcing his current wife for the express purpose of marrying another woman, how much more does he stand condemned if he engages in an adulterous affair while still married? Assuredly there can’t be too much question as to the meaning of this passage.

It is ironic that Dr. McDurmon actually brings this passage from Mark into focus while positing a different interpretation. Citing the entire passage, he finds Christ’s words to be a revocation of the Old Covenant’s laws concerning divorce and adultery. He tells us:

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<sup>39</sup> *ibid*

<sup>40</sup> Mark 10:11

Altogether this means that Jesus reinstated the original power of marriage ... The ramifications of this are profound. It is clear now that marriage is no longer tied to the seed laws and inheritance laws – those being abolished.<sup>41</sup>

Dr. McDurmon here attempts to do what no exegete should ever do -- pit Jesus against Moses. He attempts to say that Moses allowed a temporary allotment for divorce because of the supposed seed and inheritance laws under the Old Covenant administration; an allotment for divorce which is now rescinded by Jesus' further word in Mark. But this will not do.

Jesus does not rebuke Moses or even cast aspersion on Christ's own laws of marriage and divorce given at Sinai. Rather, He challenges the prevailing definitions of divorce which were everywhere wreaking havoc in His own day. Concerning arguments akin to Dr. McDurmon's, Greg Bahnsen warns us saying:

When we turn to the antithesis on divorce we again find no grounds for asserting that Christ breaks with the outlooks of God's inspired word. While some have alleged to find a repudiation of Older Testament morality here, in actuality it was the hard-hearted and distorted interpretation put forward by the Pharisees that Christ reproved, not the law itself.<sup>42</sup>

Dr. Bahnsen then informs us that this prevailing understanding of marriage and divorce seems to have originated with a particular sect of rabbinic scholarship, that of Rabbi Hillel. He says that "its teaching seemed to prevail in Christ's day, permitting a man to divorce his wife for talking too loud, for poor preparation of his meal, or even for not being as beautiful as another woman."<sup>43</sup> That it is this view of divorce which Christ repudiates, not the Mosaic law, cannot be denied.

Rather than attempt to see the Mosaic commandments on divorce as temporary, we should understand that the hardness of heart for which God's law makes accommodation is the hardness which was introduced at the Fall, in the Garden. When Christ tells His audience that from the beginning it was not so that divorce would be granted, He is not speaking of human history up until the onset of the Mosaic law but rather of the nature of man before the fall into sin.

The only reason here it becomes necessary for Dr. McDurmon to attempt to pit Jesus' teaching on divorce against Biblical law is to uphold his own tenuous arguments. Again Jesus is not concerned about a confusion of seed or the *Cherem* Principle. Any such meaning must be artificially read into the text.

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<sup>41</sup> Dr. McDurmon, *Bounds of Love*: Ch. 3

<sup>42</sup> Dr. Greg L Bahnsen, *Theonomy in Christian Ethics* (Phillipsburg, New Jersey: Presbyterian and Reformed Publishing Company, copyright 1977) pp. 97-98

<sup>43</sup> *Ibid.* pp.98-99



## God's Judgment: Dr. McDurmon's Paradox

Dispensing with the exegetical elements of Dr. McDurmon's recent work, we will now move towards a broader topic: the idea of judgment. In all fairness to Dr. McDurmon, he does not seem to be arguing that his posited changes in *cherem* law completely retracts them from any type of enforcement. In fact he specifically makes the case for two forms of punishment for these law-breaking actions: ecclesiastical censure (excommunication) and direct societal judgment from heaven (such as was manifested against Jerusalem in A.D 70.). The central narrative of many portions of *The Bounds of Love* is that the civil magistrate may not rightfully attempt to proscribe sanctions against offenders in the area of *cherem* law.

On the subject of excommunication, I heartily concur with Dr. McDurmon that the Church should not tolerate such evil practices within its congregations. To be cut off from communion with Christ's Bride on earth is no laughing matter either; for to be so separated from God's people is to be symbolically cut off from God Himself. The goal of such censure should always be reconciliation but nevertheless, how much better off would our churches be today if they denied people access to the benefits of the Church who continually engaged in gross and unrepentant sin?

Specifically speaking, for the church to place someone under excommunication is to place them under the ban, and the idea of the ban circles right back around to the Hebrew term *cherem*. The connection between excommunication, the ban, and *cherem* is ably noted by Rushdoony:

Curse, ban, and anathema are basically the same concept. That which is under a curse, ban, or anathema is devoted or dedicated (*cherem*), i.e., given over to destruction at the requirement of God. In the church, the concept of the curse, ban, or anathema appears as excommunication.<sup>44</sup>

Even though the underlying theme of the curse or ban is death, the church is allowed only excommunication as its highest possible sanction, meaning it must stop there. Symbolically speaking, excommunication means the same things as the civil magistrate's death sentence: both sanctions remove the offender from contact with law keeping people. Dr. McDurmon argues in favor of the continued practice of church discipline and dutifully cites passages where we see such judgments handed down from the Apostles.

Yet, when we turn to the civil magistrate, Dr. McDurmon's position is that the magistrate does not have the same operating standard as the minister; he has no sanction against the *cherem* laws.

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<sup>44</sup> Rushdoony, *Institutes*, p. 660 (content in parenthesis supplied)

For Dr. McDurmon, the two different institutions operate by differing standards in the New Testament era. It is telling that his argument for this is an argument from silence.

No cases of people being executed by the civil rulers for *cherem* infractions can be found in the New Testament canon we are told. The conclusion drawn from this is that civil penalties for these crimes have been revoked. As we shall see, it is premature to make these assumptions based on the silence of the New Testament. In the days of the Apostles there were no righteous, God-fearing magistrates. We do not see any civil punishments which are in accord with any Biblical standards anywhere in the New Testament. This is not because God has revoked the ability of civil rulers to punish for offenses against His law.

We do not see His laws enforced because the rulers themselves were wicked. In fact, an unwillingness to obey God and implement His righteous law was a large factor in why both apostate Israel and pagan Rome were totally obliterated by God within a fairly short amount of time from the closing of the canon.

Furthermore, an argument from silence is a dangerous hermeneutic to employ when dealing with Biblical law in the New Testament precisely because we see little reiteration or upholding of godly laws. If Dr. McDurmon is going to argue that his point is supported by the fact that the New Testament nowhere records a person being executed for violations of the laws which he has defined as *cherem*, then he cannot object when another scholar posits the same proofs in support of a total abridgment of theonomic standards for law. What's good for the goose must be good for the gander.

The concept of the church being expected to enforce a different standard than the state creates further problems as well. The Christian view of society holds to a form of “institutional pluralism” where the three sanction-bearing societal institutions—family, church, and state—are all governed by the same law: God's law. Within this pluralistic, hierarchical structure, individuals have the right of appeal from one institution to another.

If a man is wrongfully disinherited by his family, he can appeal to the church or state for further investigation of his claims. If a man escapes punishment by the state for being a thief, the church can excommunicate the man and thus pressure him to repent and make restitution. This is quite a balanced and well-oiled system, but in order for it to function all three governing agencies must be using the same yardstick, the same system of judgment. Gary North succinctly expresses our point here:

There is no doubt that Christianity teaches pluralism, but a very special kind of pluralism: plural institutions under God's single comprehensive law system. It does not teach a pluralism of law structures, or a pluralism of moralities, for this sort of hypothetical legal

pluralism (as distinguished from institutional pluralism) is always either polytheistic or humanistic.<sup>45</sup>

To foist differing standards of judgment upon the different institutions is either polytheistic or humanistic. These are strong words but they are not easily dismissed. To remove from the state the ability to punish crimes for which the family and church are expected to render judgment is to fundamentally alter the fabric of Christian society.

Taking things one step further, to thus truncate the civil magistrate is not only to alter society; it is, moreover, to spell its doom. This single point is in my mind the elephant in the room throughout Dr. McDurmon's publication on the subject, and he plainly tells us as much. When speaking of the enforcement of the *Cherem* Principle, he says that the "sanction is no longer by earthly civil government, it is from the throne of Christ."<sup>46</sup> And a little later he says that the law breakers would receive an "even worse judgment that will come from the throne of grace. This judgment fell, in history, in God's providence, in A.D. 70, when Jerusalem was utterly destroyed in the greatest demonstration of cherem devotion to destruction ever."<sup>47</sup>

The implications of this admission are astounding, and that it is here cited as a reassurance that God's law is not being set aside is far from comforting. God will obliterate societies for permitting actions to go unpunished which He Himself has, according to Dr. McDurmon, forbidden the magistrate to punish. According to the *Cherem* Principle, there is nothing a society can do to "remove the evil from its midst" which, if unchecked, will invite God's destroying wrath. We must tolerate the wicked acts and then accept God's vengeance upon our land. Dr. McDurmon's theories nullify the very nature of the magistrate's role. He must be an onlooker to the heinous acts which will bring a nation's judgment and destruction. Safe to say, this is not a good plan for maintaining a working society.

### **None Dare Call it Treason**

In a society which claims God as its king (that is to say a covenanted nation), God's law is the operating standard for all human judgment and any failure to live by or enforce that law is treason against the terms of the covenant. The role of all three covenantal institutions, as well as God-fearing individuals, is to protect and promote the sanctity of the covenant. If the covenant is broken, the society is exposed to the consuming wrath of God. In this way, we can see that a

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<sup>45</sup> Gary North, *Political Polytheism* (Tyler, Texas: The Institute for Christian Economics, copyright 1989) p.576 (emphasis in original)

<sup>46</sup> Dr. McDurmon, *Bound of Love*: ch. 3

<sup>47</sup> *ibid*

necessary function of all three human institutions of government, and the foremost job of the civil magistrate, is to avert the wrath of God.

When a petty criminal steals fifty dollars worth of goods from the local supermarket, he has broken the law and the state can lawfully intervene and force the man to pay restitution to the store owner.<sup>48</sup> In so doing, the state brings justice to the situation in so far as one man has wronged another. But more importantly, the justice of God has been satisfied. Now, we all recognize that the practice of justice cannot atone for the sin committed, but it can, by its restorative action, placate God's demand for just judgment and law-keeping.

Any crime is primarily against God because it is primarily an offense against His holy covenant law. The job of the magistrate is to intervene into the situation and restore law and order before God does so personally. Once things have gotten bad enough for God to supernaturally intervene, pleading personal righteousness won't help much. God judges societies in history and on earth, and He judges by the standard of His revealed, holy law. Woe unto those who would remove one jot or tittle and then teach others to do likewise.

Dr. McDurmon's revolutionary thesis creates quite a problem (if acted upon) for the covenanted nation. The civil magistrate is forced to stay his hand while God's covenant stipulations are trampled upon and the entire nation judged. The crux of the argument here is going to be over how to define the role of the state in the dispensing of God's covenant to man. Does the state act only to restore law in relationships man to man? Or must it have its eye fixed on rendering justice unto God and recognizing that all sins are sins against our Covenant King? The Bible is clear as to which takes precedence. God's word says:

*If in the land that the Lord your God is giving you to possess someone is found slain, lying in the open country, and it is not known who killed him, then your elders and your judges shall come out, and they shall measure the distance to the surrounding cities. And the elders of the city that is nearest to the slain man shall take a heifer that has never been worked and that has not pulled in a yoke. And the elders of that city shall bring the heifer down to a valley with running water, which is neither plowed nor sown, and shall break the heifer's neck in the valley. Then the priests, the sons of Levi, shall come forward, for the Lord your God has chosen them to minister to him and to bless in the name of the Lord, and by their word every dispute and every assault shall be settled. And all the elders of that city nearest to the slain man shall wash their hands over the heifer whose neck was broken in the valley, and they shall testify, 'Our hands did not shed this blood, nor our eyes see it shed. Accept atonement, O Lord, for your people Israel, whom you have redeemed, and do not set the guilt of innocent blood in the midst of your people*

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<sup>48</sup> Or in the case of our "enlightened" society today, the state apprehends the petty criminal, forces the store owner to pay further for the criminal's incarceration where he is exposed to much more severe criminals and he then returns to society prepared to engage in much worse acts than robbing a convenience store. Meanwhile, law abiding societies have been paying for the whole operation.

*Israel, so that their blood guilt be atoned for.' So you shall purge the guilt of innocent blood from your midst, when you do what is right in the sight of the Lord.<sup>49</sup>*

God's consuming vengeance must be stayed. Clearly the focus of such a commandment as this is not merely to restore man-to-man relations since, after all, the murderer is not caught. Rather, the concern of the governing authorities is to stay God's hand from destroying them all in His vengeance for innocent blood. It must be pointed out that there are also strong ceremonial elements to this passage, such as the sacrifice of the heifer, but the general equity remains and it speaks volumes. The magistrate must concentrate the ire of God against the law breaker or else broad judgment (plague and strife) will befall all of the people.

To deny the separation of covenant keepers from covenant breakers is to accept the downward leveling of society. It is to tolerate that which God finds intolerable and thus invite His judgment. It is no short of covenant treason. And this point does not go unrecognized by Dr. McDurmon. He comments that "only in extreme or aggravated cases in which blasphemy or false worship aims to lead to revolution, sedition, terrorism, or treason would civil government intervention be appropriate."<sup>50</sup>

The great irony herein is that blasphemy and false worship are always revolutionary, always seditious, and always treason against the God of the covenant. If Dr. McDurmon really believes that the magistrate can still intervene when covenant breaking action leads to or constitutes treason, then he has not really moved the ball down the field at all. This is because blasphemy and idolatry are *always* treasonous!

It is on this point most of all which I would like to pressure Dr. McDurmon to please explain what he means in greater detail. Is he arguing that there are non-treasonous ways to break God's covenant? Is it sometimes permissible to publicly blaspheme God and other times not? He himself opens up quite an arbitrary enforcement of the law when, after spending time demonstrating his thesis as to why all these commands do not belong to the civil realm, he concludes that the civil magistrate actually still could enforce the Biblical penalties if the actions are "bad enough." But who defines bad enough? Who defines treason? Rushdoony provides a keen definition of treason for us:

Because for Biblical law the foundation is the one true God, the central offense is therefore treason to that God by idolatry. Every law-order has its concept of treason. No law-order can permit an attack on its foundations without committing suicide. Those

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<sup>49</sup> Deut. 21:1-9

<sup>50</sup> Dr. McDurmon, *Bounds of Love*: ch. 3

states which claim to abolish the death penalty still retain it on the whole for crimes against the state. The foundations of a law-order must be protected.<sup>51</sup>

This point is rejected by many today in the name of “humanitarianism” and “compassion” but the truth remains that a society cannot tolerate an attack against its foundational principles. The foundational principles of a covenanted nation will be God’s treaty and the things contained therein. His laws must be obeyed and His honor and office must be respected. Any attack against the person or law of God will be the greatest form of treason that can be committed against the nation in covenant to God. The implicit import here is that Dr. McDurmon’s thesis constitutes either a shifting of its foundational premises away from those things expressed in Scripture and acted upon by Christians for two millennia, or it is has radical suicidal tendencies. Rushdoony speaks on this dilemma, saying:

The basic premise of the law and of society today is relativism. Relativism reduces all things to a common color, to a common gray. As a result, there is no longer any definition for treason, or for crime. The criminal is protected by law, because the law knows no criminal, since modern law denies the absoluteness of justice which defines good and evil. What cannot be defined cannot be delimited or protected. A definition is a fencing and a protection around an object: it separates it from all things else and protects its identity. An absolute law set forth by the absolute God separates good and evil and protects good. When that law is denied, and relativism sets in, there no longer exists any valid principle of differentiation and identification.<sup>52</sup>

This brings us rather full circle in our discussion of Dr. McDurmon’s thesis. In denying the law its fundamental quality of separating the good from the evil, Dr. McDurmon has set forward a system of law where the lines become fuzzier and fuzzier until treason cannot be defined. Dr. McDurmon himself seems unable to define treason and must lamely conclude that if certain actions become bad enough they may be treason. Over against this lack of definition, it should be posited that any attack against or transgression of the law order of God constitutes wicked treason and revolution. God’s Word is clear and we must have the integrity and honesty to stand upon it. Dr. McDurmon’s society is one which must tolerate treasonous acts and thus be subject to the downward leveling and eventual suicide that all such disintegrations of the antithesis inevitably commence.

## Conclusion

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<sup>51</sup> Rushdoony, Institutes: p, 38

<sup>52</sup> Ibid. p. 119

I have submitted these petitions with a spirit of both humility and grave concern. If the forcefulness of the arguments presented is found distasteful, may the reader be assured that I bear no hostility to Dr. McDurmon. Writing rebuttals and critical reviews is a rather tough business, especially when conducted among friends.

To Dr. McDurmon, I make three requests in conclusion: First, I ask that Dr. McDurmon produce a clear definition of what constitutes treason from within his new thesis. Saying, “in bad enough cases” is simply too arbitrary to inform enforcement. Second, I ask that Dr. McDurmon more firmly defend his thesis from the actual text of the Bible. In too many places, his hermeneutic appears to be derivative of his conclusions. Over and above the exegetical problems this creates, the end result of the *Cherem* Principle thesis leaves civil enforcement and even the validity of Old Testament law on shaky ground.

Lastly, I have chosen here not to respond to Dr. McDurmon’s marathon of shame wherein he glibly condemns everyone from John Calvin to 17<sup>th</sup>-century Reformed Baptists as being “dangerous” and Papists who only used God’s law as a pretext to advance the social theories of Justinian and Constantine. Aside from advancing caricatured versions of historical figures, Dr. McDurmon’s rather heated accusations fall to the ground unless it can be ably demonstrated that the civil magistrate is forbidden to enforce those laws which he has identified within his “*Cherem* Principle.”

In a spirit of agreement, I thank Dr. McDurmon for not parroting the opinions of our forebears as the unimpeachable gospel truth, and I concur that there are a great deal of men today who are little more than romantic play actors fantasizing about “good-ole days” that weren’t actually so good. That being said, our goal in the here and now must be heralding God’s Gospel message and working out all of its ramifications to the praise of the glory of the riches of His grace. A great deal of excellent and pointed work has been done over the last fifty years, work which looks to bear fruit in the near future. Let us not turn aside from that path lest we forsake the good way and lose the small amount of ground we have gained.

*“Treason doth never prosper for if it succeed, none dare call it treason”*

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Sola Dei Gloria

Sola Gracia

Sola Scriptura

Solus Christus

Sola Fide