

Grace Baptist Church

Willmar, MN

“Pause & Ponder” by Pastor Ryan Snyder

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Not so long ago, I saw a roadside church sign that read: “We cannot legislate morality.” I cannot help it, but this phrase always irritates me. Why? Please ponder the following logic: the consensus of church history is that God’s “moral law is summarily comprehended in the Ten Commandments” (e.g., Westminster Shorter Catechism, Q. # 41). The Sixth Commandment in the Ten Commandments states: “**Thou shall not murder.**” When our civil government has a law on the books that prohibits and punishes murder, are we not legislating morality? Sin is lawlessness (I John 3:4), and not just against any law, but God’s moral law (Romans 2:14-15; 3:23), which is the standard of morality for *every* nation. “**Sin is a reproach to any people**” (Proverbs 14:34).

In this article, we are pondering various wrongs—sins—that people commit against their neighbors and how civil governments (and businesses) should redress these wrongs according to the Bible. The legal system in the United States makes a distinction between wrongs that are called “torts” and wrongs that are called “crimes.” A tort is a civil wrong, in which the harmed party can sue the perpetrator for money damages; it is a French term, derived from the Latin *tortus*, meaning “twisted.” A typical textbook definition of a crime is “an offense against the public at large. It is a wrong against all of society, not merely against the individual victim.” A common textbook definition of a tort is “a wrong against an individual (a private wrong), as opposed to a crime, which is against the public at large.”

What is technically wrong with these two legal definitions of wrongful (sinful) acts? Both torts and crimes are committed against an individual victim; both in a sense are private wrongs. If you are robbed at gunpoint, the robber committed the wrong against you, not the public at large; your wallet was stolen; in the wrongdoer’s possession is not the wallet of the “public at large”, but your wallet. Thus, I think that it is better to understand that all torts and all crimes are wrongful acts against an individual victim, but crimes are those wrongful acts against an individual victim that *are so heinous* that we as a society have chosen to collectively punish the wrongdoer with either fines, imprisonment, or the death penalty (to justly punish the wrongdoer, to protect the public at large, and to deter others from committing similar crimes). In contrast, as already stated, the individual victim of a tort is usually entitled to some form of money damages from the tortfeasor as restitution.

Please note, in the legal system of the United States, a wrongdoer can be guilty of committing both a tort and a crime within one wrongful act. There are many torts and crimes that correspond, one to another. The famous example of O.J. Simpson being sued civilly by the victim’s family under the tort of committing a “wrongful death”, which corresponds to the prosecution he faced by the civil government for the crime of “murder.” The torts of conversion of property and trespass to personal property correspond to the crime of larceny. The torts of assault and battery correspond to the crimes of assault and battery, each defined differently. And so on . . .

Must a society make such a fine distinction between “crimes” and “torts”? Not necessarily. Let us ponder for a moment Exodus chapters 21 and 22 in the Bible; please notice that these two chapters in Exodus are

immediately preceded by the Ten Commandments in Exodus chapter 20. We remember that the Ten Commandments are ten *general* principles that summarize God's complex moral law for all of humanity for all time; in essence, the Ten Commandments protect the sanctity of God, authority, family, human life, sex, truth, and property. Now, it is one thing to have general moral principles that protect things intrinsically valuable; it is a whole different endeavor to *apply* those general moral principles to the complexity of human life and culture through the particulars of statutory law and/or case law; and with regards to Exodus chapters 21 and 22, as human culture existed in the ancient Middle East around 1400 B.C. in contrast to society today.

From Exodus chapters 21 and 22, one thing noticeable is that God's particular statutes for the civil government in ancient Israel make no distinction between torts and crimes; what we have are specific wrongful acts (sins) against individual victims or their property and the corresponding prescribed punishments that the civil government in ancient Israel was to carry out against the wrongdoer for each wrongful act (sin).

At this point in our discussion, it needs to be stressed that we are talking about how the *civil government* of ancient Israel was to respond to sin within its society; that is, we are discussing the duty that the *civil government* in ancient Israel had under God to enact *certain* punishments against *various* wrongdoers. In addition, please note that not all sins (wrongs) were punished by the civil government of ancient Israel; that is, God did not say that every sin (wrong) should be punished by the civil government of ancient Israel. Some sins are beyond the purview of the civil government. For instance, we know from Scripture that human beings must not think an evil thought (e.g., Exodus 20:17; Proverbs 16:2; Matthew 5:28). But there is no place in the statutes and case law of ancient Israel where merely and solely thinking an evil thought is punishable by the civil government; it was a sin to either covet or lust in one's heart, but not a crime and/or tort in ancient Israel.

What types of punishments against wrongful acts did the civil government of ancient Israel carry out? From Exodus chapters 21 and 22, including the rest of the books of Moses, we see that there are several types of punishments enacted: *capital punishment* (many examples in Exodus 21), *restitution* (many examples in Exodus 22), and *imprisonment* for involuntary manslaughter (e.g., Numbers 35:9-34 and Deuteronomy 4:41-43). And finally, for each wrongful act dealing with *personal bodily injury*, the civil government of ancient Israel was to follow the *justice* principle of *proportional* punishment, which is summarized "as a penalty life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, and bruise for bruise" (Exodus 21:23-25), also called the *lex talionis* in Latin.

At this point in our train of thought, I would like to say a word about *restitution* as a form of punishment and I would like you to ponder the amount of restitution a business should provide a customer that has been harmed on its premises. Some suggest that a business should *overcompensate* to right the wrong, which is probably derived from Exodus chapter 22, verses 1 to 9. For example, verses 4, 7, and 9 prescribe paying "double" for the wrong that was committed and verse 1 prescribes paying fourfold and even fivefold for the specific harm committed (Exodus 22). If you ponder the nature of the harm committed in these particular cases, the amount of restitution really is proportional to the loss suffered; that is, the restitution is really not overcompensation. Why? One's property is not idle; it is earning "interest" or "fruit" to the owner. A cow of mine which was stolen or killed would have mated and given birth to a calf, but because of the theft or property damage I have neither the cow nor the calf. My apple tree that you damaged would have produced a barrel full of apples, but because of your careless destruction I am out both the apple tree and the apples. You get the point. A person physically injured is harmed *and* cannot work for several weeks or months. With theft or property damage, the victim is out both the principle and the interest, in a figurative and a real sense. And thus, to make the victim whole, justice requires that the wrongdoer not only pay the victim for what they stole and/or damaged, but a multiple of it, which is *proportional restitution* to the damage suffered and therefore, a *just* form of punishment.

It seems from Scripture (Deuteronomy 19:15-21 and 21:18-21) that God's primary purpose of delegating to a *civil government* the authority to punish wrongdoers is to enact a *just* punishment upon the duly convicted

wrongdoer and thereby, to deter others from committing the same wrongful act. A “just” punishment means that it is proportional to the heinousness and seriousness of the wrongful act. Proportionality is what “an eye for an eye” signifies and one must be wise in determining what is proportional, as we just discussed.

At this point in our discussion, a word must be said about the *lex talionis* principle of a proportional, just punishment meted out by the civil government. The New Testament in the Bible is clear that Israel’s leaders over the years developed a false understanding of the *lex talionis*. Let us ponder for a moment Matthew 5:38-42. In Matthew chapter 5 Jesus is in the middle of what is commonly called His “Sermon on the Mount.” In it, Jesus corrects many false understandings that the rabbis had about God’s moral law. The pattern is: “you have heard that it was said [by the rabbis]”, followed by “but I say unto you.” Over the years, the rabbinical tradition in Israel developed a false understanding of the “an eye for an eye” principle of just punishments for civil governments. The rabbis *falsely* took the “an eye for an eye” proportionality principle as an *individual* right for *personal, individual* vengeance; that is, they *falsely* thought that if you hit one of them, then they had a moral right to hit you back; etc. Jesus says that such an understanding of the *lex talionis* is immoral, sinful, and false. According to Jesus, the “an eye for an eye” principle of proportional punishment does not apply to us as individuals in how we relate to our neighbors; *morally, we as individuals are supposed to respond to evil way differently than civil governments are supposed to.*

Matthew 5:38-42 is parallel to Romans 12:17-21. As far as it possible with us as *individuals*, each of us morally is supposed to be at peace with all men and is even supposed to give our enemy something to drink if he is thirsty or go walk an extra mile with one who has *forced* us to walk with him. Morally, individuals are not supposed to be personal vigilantes, seeking their own personal vengeance against wrongdoers (Romans 12:19), but are to follow the Golden Rule (Matthew 7:12). Civil governments, on the other hand, are prescribed by God in Romans 13:1-4 to follow God’s moral law in enacting vengeance against evildoers, even to the point of “**wielding the sword**” against the wrongdoer (Romans 13:4); swords are not for tickling, but are a lethal weapon. According to the apostle Paul, *some* wrongful acts (sins), even in the New Testament, are “worthy of death” as a capital punishment by the civil government (Acts 25:11). After being arrested, the Apostle Paul said to the Romans civil authorities: “**If then I am a wrongdoer, and have committed anything worthy of death, I do not refuse to die**” (Acts 25:11). Implied in this is that *some* wrongful acts (sins) are *not* “worthy of death” as a punishment by civil governments, which instead may be worthy of imprisonment and/or restitution. To speak in terms of what wrongful acts are *worth* in punishment deserved is to speak under the assumption that a *just* punishment enacted by the civil government for a wrongful act is the punishment that is *proportional* to it.

At this point, some of you may wonder if the line of thinking in this article supports a theocracy in the United States. Now, let me be absolutely clear: I do *not* support a theocracy, I am *against* a theocracy, and I am *against* any form of civil rule by priests, pastors, and/or a church; but *I do want God’s moral law in the Bible to be authoritative when our representatives in Congress are considering what wrongs (sins) in our society should be legally regarded as either criminal or tortious.* When considering what wrongful acts should be punished in our modern society and also the punishments that should correspond to these wrongful acts, I would like for you to ponder Roger Williams and the founding of the Rhode Island colony in North America in the seventeenth century. Pondering the history of Roger Williams gets us back to the basics and the Ten Commandments.

We know that God wrote the Ten Commandments down on *two* tablets of stone and gave them to Moses at Mt. Sinai (Exodus 31:18). The first tablet of the Ten Commandments contains the moral principles of our duties to God and the second tablet of the Ten Commandments contains the moral principles of our duties to our neighbor (take a moment and read the Ten Commandments in Exodus Chapter 20; clearly, the first half of the Ten Commandments contain our duties to God and the second half of the Ten Commandments contain our duties to our neighbor). In the New Testament, a lawyer trying to trick Jesus asked Jesus what the greatest commandment was in God’s Law and Jesus replied: “**You shall love the LORD your God with all your heart, and with all your soul, and with all your mind.**” This is the great and foremost commandment.

And the second is like it, ‘You shall love your neighbor as yourself.’ On these two commandments depend the whole Law and Prophets” (Matthew 22:35-40). In essence, Jesus summarized the first tablet of the Ten Commandments as **“you shall love the LORD your God with all your heart . . .”** and Jesus summarized the second tablet of the Ten Commandments as **“you shall love your neighbor as yourself”** How do I know when I am loving my neighbor as myself? I know that I love my neighbor as myself when I do not murder my neighbor, when I do not commit adultery with my neighbor’s spouse, when I do not steal from my neighbor, when I do not bear false witness against my neighbor, and when I do not covet anything that belongs to my neighbor (Romans 13:9). And the same logic applies when pondering how to know whether I love God with all of my heart. I know that I love God with all of my heart if I have no other gods before Him, etc.

Before founding the Rhode Island colony in the early seventeenth century, Roger Williams lived in colonial Massachusetts. In short, colonial Massachusetts embraced the notion that the role of a Gentile civil government as **“God’s minister”** (Romans 13:4) in our New Testament age is to legislatively enforce *both* tablets of the Ten Commandments, whereas Roger Williams believed that the role of a Gentile civil government as **“God’s minister”** (Romans 13:4) in our New Testament age is to legislatively enforce only the second tablet of the Ten Commandments. For Roger Williams, disobeying a commandment listed in the first tablet of the Ten Commandments (e.g., Sabbath keeping) is sinful in our New Testament age, but it should not be made criminal.

It makes sense that the nation of ancient Israel criminalized violations of *both* tablets of the Ten Commandments because God had chosen Israel to be a *nation* for His own possession (Exodus 19:4-6; Deuteronomy 4:5; I Kings 8:35; Amos 3:2; etc.). For the nation of Israel, criminalizing sins of the first tablet of the Ten Commandments did not *coerce faith in God* because the *nation* of Israel was there at Mount Sinai when God gave Moses the Ten Commandments (Exodus 19:4-6; 20:18-26) and the *nation* of Israel *voluntarily* entered into a unique covenantal relationship with God by responding to Moses at Mount Sinai: **“All that the LORD has spoken we will do!”** (Exodus 19:8). That is, *the nation of Israel voluntarily had faith in God and by covenant agreed to be held in this world to both tablets of the Ten Commandments under God as their King and Redeemer from Egypt*. Again, coerced faith in God does not please God.

In the New Testament, Romans 13:1-10 is the best text we have that lays out God’s prescription for Gentile civil governments, who are all under God as the Creator of the universe. Interestingly, the apostle Paul in Romans 13:1-10 provides examples of divine commandments *only* from the second tablet of the Ten Commandments (Romans 13:9) and *only* states the second great commandment (Romans 13:9) pronounced by Jesus in Matthew 22:35-40. In sum, *Romans 13:1-10 is God’s appointment for Gentile civil governments in our New Testament age and intentionally omits commandments from the first tablet of the Ten Commandments and intentionally omits Jesus’ first and greatest commandment from Matthew 22:35-40*. Does this mean, according to Scripture, that Gentile civil governments (under God as the Creator of the universe) are divinely appointed to *only* make statutes that criminalize and/or make torts for sins of the second tablet of the Ten Commandments? Roger Williams believed so and this was the main reason he was banished from colonial Massachusetts.

Roger Williams did offer one caveat to his belief: a violation of a commandment in the *first* tablet of the Ten Commandments should be punished by the Gentile civil government in our New Testament age *only if the wrongdoer disrupted public order by endangering another person’s life and/or property* (which would be a violation of one of the commandments in the second tablet of the Ten Commandments). Was Roger Williams right and colonial Massachusetts wrong? If Roger Williams was right, then our Gentile civil governments today should be enacting statutes that are derived from ancient Israel’s civil law dealing with neighborly relationships, i.e., those of the second tablet of the Ten Commandments. A good book on this topic is "Roger Williams and The Creation of the American Soul: Church, State, and the Birth of Liberty" (2012) by John M. Barry.