Understanding the Westminster Confession of Faith, Section 19.4, on the Judicial Law and General Equity

Second Edition

By Vindiciae Legis

Preliminary Explanation

This article originally began as a critique of Matthew Winzer's section on *The nature of general equity* in his deeply flawed paper: "The Westminster Assembly & the Judicial Law: A Chronological Compilation and Analysis." Part Two: Analysis, appearing in *The Confessional Presbyterian*, volume 5 (2009), 67-70. In its present form this article is intended to serve both as a stand-alone article on the widely misunderstood *WCF* 19.4, which includes the Confession's general equity clause, and also as an augmentation of my earlier analysis, *The Westminster Confession and Judicial Law: The Anti-Theonomic Misrepresentations of Matthew Winzer*.[1]

In dealing with Winzer on the judicial law I omitted any discussion of his peremptory treatment of Dr. Francis Nigel Lee's interpretation of the expression "sundry judicial laws" in *WCF* 19.4.[2] Lee sees this expression as applying only to the strictly Jewish component of the judicial law and not to the entire judicial law. One would have expected Winzer to spend a little more time studying the historical justification for the learned Dr. Lee's view before dismissing it offhandedly.[3]

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1 This series is available at Theonomy Resources at http://theonomyresources.blogspot.com/2010/11/critique-of-section-entitled-expiry-of.html

2 Matthew Winzer, "The Westminster Assembly & the Judicial Law: II. Analysis," *The Confessional Presbyterian*, 5 (2009): 68.

3 Francis Nigel Lee, *Are the Mosaic Laws for Today*? 3rd Revised Edition, 2004. www.dr-fnlee.org/docs4/atmlft/atmlft.pdf (10 Mar. 2011). [Theonomy Resources' disclaimer: because of Nigel Lee's theological similiarities to kinism (although we don't believe Lee's views to be as drastic), we do not endorse Lee's writings and lectures about race.]

Winzer quotes Lee thus: "the *Confession* then also goes on to declare that only 'sundry [or several] judicial laws ... expired together with the State [or *Politeia*]' of the people of Israel" and "that even those 'sundry judicial laws' still oblige all people to obey them—as far as 'the general equity thereof may

Daniel Ritchie takes the same approach as Lee in his recent work, *The Law is Good*.[4] I am persuaded that Lee and Ritchie are correct in their interpretation of "sundry judicial laws." In my view *WCF* 19.4 is widely misunderstood and so the purpose of this article is to explore its original intent and the reasoning behind it.

There was a wide diversity of opinion amongst the Westminster divines on many issues, especially on church government. And I am far from claiming that the divines were in complete lockstep on all the issues discussed below. Anyone reading the divines will become aware of usually minor differences regarding the judicial law, differences which were often either merely terminological, or about which particular laws had expired and which had not. Present day revisionist theologians often inflate these differences and falsely claim that one party or another were not really theonomic.

What I am claiming is that the divines quoted below represent the mainstream of puritan thinking,[5] especially of Presbyterians, from Thomas Cartwright through William Perkins and William Ames[6] to the majority in the Westminster Assembly and beyond. I do not believe that *WCF* 19.4 was a compromise, worded so as to accommodate both theonomic and non-theonomic positions. Rather it was and remains an integral part of an unequivocally theonomic affirmation of the principles of Divine law.

Three *prerequisites* for a correct understanding of *WCF* 19.4 are first introduced because, without the necessary background information, it is all

require." (Winzer, 68; Lee, 39.) Brackets are part of the original quote.

[4] Daniel F. N. Ritchie, *The Law is Good, A Defence of Judicial Calvinism* (Reformed Worldview Books, 2010), 129n. Available at Lulu.com at http://www.lulu.com/spotlight/reformedworldview.

[5] I am speaking strictly of the divines from the British Isles. Some continental divines are also cited in a footnote.

[6] Ames is generally classed as an Independent or Congregationalist. It should be noted, however, that he opposed separatism and advocated establishment, teaching and ruling elders, and synods and classes. See for example: William Ames, *The Marrow of Theology*, trans. and ed. John D. Eusden (Grand Rapids, MI: Baker Books, 1997), 5, 205-210. Ames' *Medulla* (*Marrow*) is cited in *Jus Divinum* in support of the authority of synods and classes: David W. Hall, ed., *Jus Divinum Regiminis Ecclesiastici: or, the Divine Right of Church Government Asserted* (Dallas: Naphtali Press, 1995), 239. This modern edition is a compilation of the first (1646) and third editions (1654).

too easy for modern day readers to misinterpret this section of the Confession. Without these prerequisites the divines can appear to disagree among themselves or even contradict themselves, when in reality there is remarkable agreement and self-consistency on the issues of the judicial law and general equity.

Note: Most of the books cited are freely available online at Google Books or at www.archive.org, in pdf format. Still Waters Revival also provides many puritan works which may be downloaded for a nominal charge at www.puritandownloads.com. If I am not mistaken, only Thomas Cartwright's *Second Replie* will be completely unavailable to the average reader.

Three Important Prerequisites

First Prerequisite

An important prerequisite for understanding *WCF* 19.4 is to recognize that the puritans, including the Westminster Divines and their predecessors, divided the judicial law into two basic categories. In the first category were sundry laws special to the "body politic" of Israel and which expired with it. Often these fenced the ceremonial law, some related to health and others to inheritance, etc. The second category was perpetual, part and parcel of the moral law and had application to all nations at all times. Laws in this category never expired and were variously referred to as laws of common equity, general equity or moral equity.[7]

Thomas Cartwright stressed the specifically Jewish nature of the first category:

> Nowe albeit those lawes gyven unto the Jewes for that land doo not binde the Gentils in other landes, for somuche as the diversitie off the disposition of the

[7] Winzer ignores the fundamental division in the judicial law made by puritan divines, and reflected in the Confession. He writes: "The text [of *WCF* 19.4], however, will not permit such a reading. At no point does it partition the judicial law and speak of a subset of them. The pronoun, *which*, refers back to what was given to Israel—'sundry judicial laws.' It is therefore the whole set of judicial laws which are expired, and not merely a subset of them" (Winzer, 68). The reader will realize that Winzer's argument about the use of the pronoun "which" is circular, assuming what it purports to prove.

> people, and state off that country gave occasion off some lawes there, which would not have bene in other places, and peoples… [8]

For Cartwright such laws were in direct contrast with unchangeable second category laws, applicable to all nations:

> there are certein Judiciall lawes which can not be changed, as that a blasphemer, contemptuous, and stubborne Idolater etc. ought to be put to death.[9]

On other pages Cartwright also includes murder, adultery, incest, etc. as capital offenses.

William Perkins wrote explicitly of the distinction between the two categories of judicial law:

> Therefore the judiciall lawes of Moses according to the substance and scope thereof must be distinguished; in which respect they are of two sorts. Some of them are lawes of particular equity, some of common equity.[10]

The "lawes of particular equity" and "common equity" are noted in the margin as "Iuris particularis" and "Iuris communis," respectively.[11] Perkins

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[8] Thomas Cartwright, *The Second Replie of Thomas Cartwright: agaynst Maister Doctor Whitgiftes second answer touching the Churche Discipline* (1575), 97. Selected material, including the extracts used in this article, from the *Second Replie* was later republished in, Thomas Cartwright, *Helps for Discovery of the Truth in Point of Toleration* (London: Printed for Thomas Banks, 1647).

[9] Cartwright, *Second Replie*, 98.

[10] William Perkins, *A Discourse of Conscience* (Cambridge: John Legate, 1596), 17.

[11] Continental divine Franciscus Junius (1545–1602) observed the same distinction and made frequent use of these Latin terms in his *De Politiae Mosis Observatione*, 2nd ed. (Leiden: John Orlers, 1602). The first edition is dated 1593. Chapter 6 is translated into English in *The Anonymous Writings of George Gillespie*, ed. Chris Coldwell (Dallas TX: Naphtali Press, 2008), 40ff, available also on Google Books. This chapter is the basis of Gillespie's comment, "Yet I fear not to hold with Junius, *De Politiae Mosis*, that he who was punishable by death under the judicial law, is punishable by death still; and he who was not punished by death then, is not to be punished by death now." Gillespie, *Anon. Writings*, 58.

Some other continental divines of the same mind are:

J. Heinrich Alting (1583–1644): "The forensic Laws of Moses are not all of one sort. In truth, some are only of particular right; others, moreover, are of common right and equity." J. Heinrich Alting, *Exegesis Logica & Theologica Augustanae Confessionionis* (Amsterdam: John Janssonius, 1647), 97. Excerpt translated by Adam Brink.

J. Heinrich Alsted (1588–1638): "Of the forensic laws of Moses, those are perpetual which are of common right, or which have something moral. However, those have been abrogated which are of particular right, that is, such laws as were specially for the Mosaic constitution, and which have something

continues by providing definitions of each of the categories.[12] These might be summarized as:

> 1. Laws of particular equity are laws which were only equitable and binding under the special circumstances of the Jewish commonwealth.
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> 2. Laws of common (or general) equity are laws which are equitable for Jew and Gentile alike. These laws are grounded in the moral law and therefore universally binding on the consciences of all men everywhere.

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ceremonial attached." J. Heinrich Alsted, *Encyclopaedia*, 7 vols. (Herborn: 1630), 4:1599. Excerpt translated by Adam Brink.

Johannes Polyander (1568–1646): "Things which in this law are of common right, those still bind magistrates and subjects of every kind; but what are of particular Jewish right: those expired together with the polity of Moses." Johannes Polyander, "Disputatio XVIII. De Lege Dei," *Synopsis Purioris Theologiae*, ed. Herman Bavinck (Leiden: Donner, 1881), 162. Excerpt translated by Vindiciae Legis.

Wilhelm Zepper (1550–1607): "A violator of the Sabbath was to be punished capitally, not civilly from common right but by particular and ceremonial right." Wilhelm Zepper, *Legum Mosaicarum Forensium Explanatio*, 2nd ed. (Herborn: 1614), 71. Excerpt translated by Vindiciae Legis. Zepper apparently takes the same view as Samuel Rutherford and William Gouge that the death penalty for Sabbath breaking was a ceremonial penalty rather than a moral penalty. This begs the question: what then is the moral penalty for Sabbath breaking?

Francis Turretin (1623–1687): "Undoubtedly those things are to be accurately distinguished which in the law were of particular right (which peculiarly applied to the Jews in relation to time, place and the Jewish nation: such was the law concerning a husband's brother, the writing of divorcement, the gleaning, etc.) from those which were of common and universal right, founded upon the law of nature common to all…" Francis Turretin, *Institutes of Elenctic Theology*, trans. G. M. Giger, ed. J. T. Dennison, Jr., 3 vols. (Phillipsburg, NJ: P & R, 1994), 2:166.

[12] Perkins' definitions are:

"Lawes of particular equity, are such as prescribe justice according to the particular estate and condition of the Jewes common-wealth & to the circumstances thereof: time, place, persons, things, actions. Of this kind was the law, that the brother should raise up seed to his brother, and many such like: & none of them bind us, because they were framed and tempered to a particular people.

Judicialls of common equity are such as are made according to the lawe or instinct of nature common to all men: and these in respect of their substance, bind the consciences not onely of the Jewes but also of the Gentiles: for they were not given to the Jewes as they are Jewes, that is, a people received into the Covenant above all other nations, brought from Egypt to the land of Canaan, of whome the Messias according to the flesh was to come; but they were given to them as they were mortall men subject to the order and lawes of nature as all other nations are. Againe judiciall lawes, so farre forth as they have in them the generall or common equity of the law of nature are morall and therefore binding in conscience, as the morall lawe." (Ibid., 17, 18).

Puritan Thomas Hall (1610–1665) in his commentary on the third and fourth chapters of II Timothy, the title page of which bears the imprimatur of Westminster divine Edmund Calamy, provides similar definitions.[13]

Any divine who makes the distinction between laws of particular equity and laws of general equity, or juris particularis and juris communis,[14] is by definition Theonomic. He recognizes that those laws which were not designed specifically for the Jewish commonwealth continue to be binding on Jew and Gentile alike.

It will be shown later that these categories are somewhat idealized. The Westminster divines and others recognized that the actual laws of Scripture, to a limited extent, often overlap.

Second Prerequisite

A second prerequisite for understanding *WCF* 19.4 is to realize that only the first category was viewed as the judicial law *proper*. The second category, because of its moral nature and application to all nations, was viewed as moral rather than strictly judicial.

Westminster divines Daniel Cawdrey and Herbert Palmer[15] define laws "properly Judicial" as:

> Now for the *Judicials*, we conceive they may be thus described to be *Laws given to the people of Israel, in civil matters between man and man, to order them as*

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13 "Some judicial precepts are *Juris communis*, of common equity, such as are agreeable to the instinct and law of nature, common to all men; and these for substance bind all persons, both Jews and Gentiles; as being Moral, and so agreeing with the Moral Law. These judicial precepts which were *Juris particularis*, of particular equity, such as pertained especially to the Jews common-wealth, and were fitted for them and their time, are now abolished. E.g. that a man should marry with none but his own stock; That the brother should raise up seed to his Brother, and that a Thief should restore four-fold, this was peculiar to the Jewish Common-wealth and not to ours." Thomas Hall, *A Practical and Polemical Commentary, Or Exposition upon the Third and Fourth Chapters of the Latter Epistle of Saint Paul to Timothy* (London: Printed by E. Tyler for John Starkey, 1658), 227.

14 These terms are used in this article strictly in the theological sense as applied to the judicial law. Their wider usage as in civil and canon law is not intended.

15 Herbert Palmer was appointed an assessor to the prolocutor of the Assembly following the death of John White, with the duty of taking the prolocutor's chair during times of occasional absence.

> *they were a body politick, to whom the Land of Canaan was allotted for an inheritance, and from among whom the promised Messiah was to be born*.[16]

Attached to this definition is the margin note: "Description of Laws properly Judiciall."[17] Cawdrey and Palmer go on to summarize the difference between the two categories of judicial law in these terms:

> So then we esteem those properly *Judicials*, which between man and man were relatives[18] to the Land of *Canaan*, and expectation of the *Messiah*. And all other, (not *such*, nor *ceremonial* as before) we esteem *moral*.[19]

The authors provide two examples of such laws: the Old Testament law of "*divorce*, which was an *indulgence* to them as our Saviour expressly saith, and by Him thenceforth *repealed*…And that of *marrying the widow of a brother dead without children…*"[20]

Like Cawdrey and Palmer other divines also tended to use words like proper or properly to qualify their references to the first category of judicial law. Over a decade before Cawdrey and Palmer, William Perkins' former student at Christ's College, Cambridge, William Ames, had defined the judicial law proper in similar language to theirs:

> Those Lawes were properly termed *Judiciall*; which being not *Ceremoniall*, had some singular respect to the people of the *Jewes*, so that the whole reason and ground of them, was constituted in some particular condition of that Nation.[21]

According to the Westminster divine, William Gouge:

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16 As extracted from: Daniel Cawdrey and Herbert Palmer, *Sabbatum Redivivum: or the Christian Sabbath vindicated* (London: Robert White for Thomas Underhill, 1645): Chris Coldwell, "The Westminster Assembly & the Judicial Law: I. Chronology," *The Confessional Presbyterian*, 5 (2009): 28. [Extract reformatted to match original usage of italics in *Sabbatum Redivivum*.]

17 This margin note is from the original *Sabbatum Redivivum* and appears to have been omitted by Coldwell.

18 "relatives to" i.e. related to, connected with.

19 Coldwell, *Conf. Pres*., 28.

20 Ibid.

21 William Ames, *Conscience with the Power and Cases Thereof* (1639; reprint, Puritan Reprints, 2010), 109. The first edition is understood to be that of 1631 (in Latin).

> [T]he Jews had a judicial law, proper and peculiar to that polity.[22] This law concerned especially their civil estate.[23]

Besides the word *proper*, other terms like *simply* and *Mosaic* or *Mosaical* were also used to describe the first category. Thomas Edwards, London divine, contemporaneous with the Assembly, well regarded by and influential with the Presbyterian party in the Assembly, spoke of the first category as "Lawes properly judicial,"[24] "commands simply Judicial, given to the Jewes only…"[25] and as "merely Mosaical and abrogated." [26] [27]

Other divines spoke of the first category simply as *the* judicial law and omitted any qualifying adjectives whatsoever. Westminster divine, Anthony Burgess, speaking of the first category of judicial laws in his lectures on Divine law, published under the title, *Vindiciae Legis*, tells us:

> And thus for the Judiciall Laws, because they were given to them [the Jews] as a politick body, that polity ceasing, which was the principall, the accessory falls with it;[28]

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22 "that polity" i.e. the Jewish people considered as an organized society, a body politic.

23 William Gouge, *A Commentary on the whole Epistle to the Hebrews*, 3 vols. (Edinburgh: James Nichol, 1866/67), 2: 123. Gouge continues: "Many branches… appertained to the Jewish priesthood; as, the particular laws about the cities of refuge... Num. xxxv. 25. And laws about lepers… Lev. xiv. 3. And sundry other cases which the priest was to judge of, Deut. xvii. 9. So also… distinguishing tribes. Num. xxxvi. 7; of reserving inheritances to special tribes and families, of selling them to the next of kin, Ruth iv. 4; of raising seed to a brother that died without issue. Gen. xxxviii. 8, 9… the year of jubilee, Lev. xxv. 13, &c."

24 Thomas Edwards, *The Casting Down of the last and strongest hold of Satan, or, a Treatise against Toleration and pretended Liberty of Conscience* (London: Printed by T. R. and F. M. for George Calvert, 1647), 51.

25 Ibid., 65.

26 Ibid., 71.

27 In the last two citations, Edwards is writing against those who miscategorize the law.

28 Anthony Burgess, *Vindiciae Legis*: *or, A Vindication of the Morall Law and the Covenants, From the Errours of Papists, Arminians, Socinians and more especially Antinomians. In XXX Lectures, preached at Laurence-Jury, London. The second Edition corrected and augmented* (London: James Young for Thomas Underhill, 1647), 168.

> Now it may be easily proved, that the Ceremoniall, and Judiciall Laws they are abrogated by express repeal.[29]

It is clear from his reference to the Jewish "politick body" that Burgess is speaking of the judicial laws as defined above by Cawdrey and Palmer, i.e. as the judicial law *proper*. He is not speaking of the entire judicial law as Winzer and others would have us believe.[30] As confirmation of this we note that in a sermon preached less than two years earlier (see below) Burgess argued for the continued binding force of second category laws. Only if Burgess had experienced an abrupt change of mind would he argue for the abrogation of the entire judicial law.[31]

There is at least one occasion where William Gouge, who despite making a clear distinction between the law categories, wrote of the first category simply as judicial:

> Thereof there were three kinds [of laws]: 1. Moral… 2. The ceremonial… 3. Judicial, which was the rule of policy for the polity of the Jews.[32]

The context shows that Gouge is excluding from the judicial, laws of moral or common equity, such as laws against blasphemy or Sabbath breaking. He includes these laws with the moral law.

As previously explained, laws of the second category were regarded very differently from those of the first. Ames wrote:

> Those Lawes therefore which are usually reckoned among the Judiciall, and yet in their nature beare no singular respect to the condition of the *Jewes* more than any

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29 Ibid., 211.

30 Winzer, 68, 68n.

31 Burgess' sermon stressing the binding nature of certain judicial laws was delivered on September 5, 1644. His work, *Vindiciae Legis*, as just cited where, according to Winzer, Burgess is claiming the abrogation of the entire judicial law, is prefaced by a letter dated June 11, 1646 from the "President and Fellowes of Sion Colledge London." The letter requests publication of Burgess' lectures which make up the book. Thus any theory of a drastic change in Burgess' opinion on the judicial law, must posit that the change took place in the period between September 5, 1644 and June 11, 1646. That would, of course, involve Burgess in an incredible *volte-face*.

32 Gouge, 2:347.

other people. Those are all of the Morall and Natural Law,[33] which are common to all Nations.[34]

Second category laws were often spoken of as appendices to the moral law. Ames beautifully describes the relation between these judicial appendices and the Decalogue:

> For God would have his Law guarded with such kind of injunctions as with bounds to keepe men off from more heynous sinnes. Now as the bounds and wall which defended the house was reckon'd as one with the house, so these appendixes to the commandements make but one Decalogue.[35]

Theonomy's opponents sometimes quote Anthony Burgess as a representative Westminster divine who strongly advocated the complete abrogation of the judicial law. Nothing could be further from the truth. In a sermon delivered on September 5, 1644 he said:

> There are such [punishments] as are immediately commanded by the Law of God, or are evidenced by the Law of Nature. And here though it be seriously disputed among Divines,[36] Whether a Magistrate may remit that punishment, which by

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33 Readers may be justifiably concerned about the occasional reference by the divines to "natural law" and human reason. Ames goes a long way to allaying such concerns. He writes: "But ever since, the corruption of our nature, such is the blindnesse of our understanding, the perversnesse of our will and disorder of our affections, that there are only some Reliques of that Law remaining in our hearts like to some dimme aged picture, and therefore by the voyce and power of God it ought to bee renewed as with a fresh pencill. Therefore is there no where to be found any true right practicall reason, pure and complete in all parts, but in the written Law of God, *Psalme* 119. 66." (Ames, *Conscience*, 108.)

Cartwright also speaks of "mans reason" as "shrewdly wounded." (Cartwright, *Second Replie*, 97.)

According to Rutherford: "The Law of reason in Morals… is nothing but the Morall Law and will of God, contained fully in the Scriptures of the Old and *New Testament*; and therefore it is not to be divided from the Scriptures…" Samuel Rutherford, *The Divine Right of Church Government and Excommunication* (London: Printed by John Field for Christopher Meredith, 1646), 75.

34 Ames, *Conscience*, 109.

35 Ibid., 194, 195.

36 He cannot mean his fellow Westminster divines held such a view. In the very next sentence he contrasts divines who would remit punishments with "*our* Divines" which "do justly condemn those Sanctuaries and Refuges in holy places, (as they call them) for wilful murder…"

Writing at the time of the Assembly, Thomas Edwards distinguishes two separate groups of divines. The first group is composed of "them that hold the judicial lawes totally abrogated." The second is "the generality of Orthodox Divines." (Edwards, 82.)

> God's Law is prescribed: yet that opinion seems safest, which doth wholly deny it:

He continues by providing a solid reason for that opinion:

> Because that if the Magistrate should release the punishment which God hath commanded, he should then *remittere de alieno*, release another's right, which is God's: and that is altogether unlawful. [37]

Burgess is speaking of punishments prescribed by God's law. He undoubtedly sees these penalties as still in force—except in the case of first category laws, as we saw in our earlier extracts from *Vindicae Legis*. Furthermore, it would be tantamount to stealing the rights of God if the biblical penalties were not enforced.

Like Burgess, Paul Bayne (or Baynes) who succeeded Perkins at St. Andrews, Cambridge also tells us in his commentary on Ephesians that the Old Testament penalties are still in force. Speaking of capital offenses he wrote: "Now these are not to be altered in the general, though the kind of death may be changed." [38] [39]

Because the second category was essentially moral, William Gouge stressed its common equity and therefore universal application:

> There were other branches of the judicial law which rested upon common equity and were means of keeping the moral law: as putting to death idolaters and such as enticed others thereunto; and witches, and wilful murderers, and other notorious malefactors. So likewise laws against incest and incestuous marriages; laws of reverencing and obeying superiors and governors; and of dealing justly in

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[37] As extracted from a sermon given in London, 1644, by Anthony Burgess, *Judgements removed, where judgement is executed*. (Coldwell, *Conf. Pres*., 16.)

[38] Paul Bayne, *An Entire Commentary upon the Whole Epistle of St Paul to the Ephesians* (Edinburgh: James Nichol, 1866), 162. Interestingly, Bayne divides the judicial law into three parts; one of them corresponds to our second category. The first category he divides into two parts, one guards the ceremonial law, and the other is "tempered to state, persons, &c."

[39] Sinclair Ferguson quotes a passage beginning a few sentences later where Bayne allows for mitigation and extenuation. He falsely implies that modern theonomists do not allow for mitigating or extenuating circumstances (an obvious case is when David ate the shewbread, Matt. 12:3,4). Sinclair Ferguson, "An Assembly of Theonomists?" *Theonomy: A Reformed Critique*, ed. William S. Barker and W. Robert Godfrey (Grand Rapids: Academie Books, 1990), 333.

> borrowing, restoring, buying, selling, and all manner of contracts, Exod. xxii. 20; Deut. xiii. 9; Exod. xx. 18; Num. xxxv. 30; Lev. xx. 11, &c., xix. 32, 35.[40]

Gouge also says of the universal, moral nature of second category laws, "God's laws are the rule of righteousness; from them all laws take their equities."[41] As such they apply to civil magistrates everywhere. It is their duty to recognize that, "Their rule must be God's law, and they ought to command nothing but what is according to that law."[42]

Westminster divine Francis Cheynell, citing Piscator on Exodus, emphasizes that the second category laws were perpetual and did not expire:

> All divine lawes which concern the punishment of Morall transgressions, are of perpetuall obligation and therefore still remaine in force according to their substance and generall equity, abstracted from speciall circumstances, Typicall Accessories, and the old formes of *Mosaicall Politie*, For
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> 1. These divine Lawes are not expired in their own nature.
> 2. They are not repealed by God.
> 3. The authority of the Law-giver is the same under both administrations, old and new…
> 4. The matter of the Lawes is Morall…
> 5. The reason of these divine Lawes is immutable…
> 6. These divine Lawes are Independent on the will of Man…[43]

Cawdrey and Palmer provide a hermeneutical criterion to discern which judicial laws were moral in nature:

> Every Law of God though but Positive, which is Substantially-profitable for all men in all Ages to be obliged unto is *Moral*, that is, *Universal* and *Perpetual*, unless a clear and certain repeal of it can be showed in Scripture.[44]

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40 Gouge, 2:123.

41 Ibid., 2: 348. Gouge previously cites a passage and verses from the *judicial law*: Lev. 20: 1, etc., 24: 23, Num. 15: 36, Deut. 13: 5, 11, as the basis for this and other statements.

42 Ibid., 2: 107. Gouge is speaking of law which is contained in "particular commandments which *here and there* are to be found in God's word." Clearly, he does not limit law with perpetual moral content to the Decalogue.

43 Francis Cheynell, *The Divine Triunity of the Father, Son and Holy Spirit* (London: Printed by T.K. and E.M. for Samuel Gellibrand, 1650), 473, 474.

44 Coldwell, *Conf. Pres*., 29.

According to Palmer and Cawdrey's criterion, unless a judicial law had a "clear and certain repeal" it was to be regarded as moral, universal and perpetual. By definition such a law was not subject to expiry. Notice the "burden of proof" involved here. A Divine law is binding unless it is proven to be expired. It is not automatically presumed expired. Special justification does not have to be found for a law to be considered as still binding.

Thomas Edwards tells us that these laws of common equity, often referred to as judicial, were, strictly speaking, *not* judicial:

> Customes used among them [the Jews] that were observed universally among all Nations, or by divers Nations (though not of all) strictly speaking were not Judicial Lawes…[45]

> these lawes of punishing Idolaters, false Prophets, &c. were not properly judicial Lawes, nor abrogated by Christs coming…[46]

Third Prerequisite

A third prerequisite for understanding *WCF* 19.4 is an appreciation that although the categories were ideally distinct, there was recognition by the divines that the actual laws of Scripture may overlap the idealized categories. Thus, many first category laws were, in the final analysis, grounded on moral or general equity, and this could not be ignored. Similarly, some second category laws prescribed capital punishment by stoning. Stoning was an accidental feature of the law, which seemingly savored of particular equity.[47] Additionally, because of the overlap, it was entirely possible that certain laws had been miscategorized.

Consistent with the previously mentioned "burden of proof" Cawdrey and Palmer recognized the possibility that laws counted as merely Judaic may still be binding.

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45 Edwards, 51.

46 Ibid., 77.

47 This observation is based on the obvious willingness of the divines, as evidenced in their various writings, to substitute other forms of capital punishment in the N.T. era. For example, Paul Bayne was quoted above as saying, "the kind of death may be changed." (Bayne, 162). We doubt that he thought such changes were permissible in the days of the Jewish commonwealth.

> we must needs hold that all the Laws of the Old Testament are perpetuated to this day, if there be nothing in the New Testament by way of repealing them… And if anyone think, that by this assertion, sundry of the Laws which are usually counted *judaical* will prove to be in force still; we answer, that perhaps it may prove so indeed… So we are afraid, that many Divines (not to say some *churches* and *states* nowadays), have been a little too bold in rejecting sundry Laws as merely *Judaical*, which upon further advisement might perhaps be found *Moral* and *Perpetual*.[48]

Cartwright tells us that although the strictly Jewish first category laws were not as such binding on the Gentiles, the Christian magistrate is nevertheless bound to frame their [general] equity in the laws of his commonwealth.

> Nowe albeit those lawes, gyven unto the Jewes for that land doo not binde the Gentils in other landes … yet for somuche as there ys in those lawes a constant, and everlasting equitie, whereuppon they were grounded… yt followeth, that even in making politike lawes, for the common wealth, Christian Magistrates owght to propound unto them selves those lawes, and in light of their equitie, by a just proportion off circunstances off person, place &c. frame them.[49]

Samuel Rutherford, one of the Scottish commissioners to the assembly sees an overlap between the strictly Mosaic "Judaical Laws" (first category) and laws of "perpetual obligation" (second category). He uses the law of destroying an idolatrous city, Deut. 13, as an example:

> *Judiciall* Lawes may be *judiciall* and *Mosaicall*, and so not obligatory to us, according to the degree and quality of punishment, such as is *Deut*. 13. the destroying the City, and devoting all therein to a curse; we may not do the like in the like degree of punishment, to all that receive and defend Idolaters and blasphemers in their City: and yet that some punishment by the sword, be inflicted upon such a City, is of *perpetuall* obligation…[50]

Rutherford, clearly views many or all first category laws as having underlying moral equity, "of perpetual obligation," which it is the duty of the civil magistrate to enforce.

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48 Coldwell, *Conf. Pres*., 29.

49 Cartwright, *Second Replie*, 97.

50 Samuel Rutherford, *A Free Disputation Against Pretended Liberty of Conscience* (London: Printed for R. I. by Andrew Crooke, 1649), 298.

Edwards also uses Deut. 13. in his refutation of John Goodwin's *Hagiomastix*. In doing so he provides a simple, but useful summary of how to interpret and apply Biblical law:

> If the command be pure and simple the thing is evident, where moral it binds, where ceremoniall or judiciall it binds not. But if it bee mixt of judicial, ceremoniall and morall, the morall remains in force… for whats morall in *Deut*. 13. abides, and yet whats properly judiciall and ceremonial is taken away.[51]

Our three prerequisites have shown us that there were two ideally distinct categories of what was called judicial law. One category, the judicial law proper, expired. The other category, strongly associated with the moral law, was common, moral and perpetual and therefore could not expire. However, even the expired category contained laws characterized by some degree of general or moral equity. Although written in the context of church government, the *Jus Divinum Regiminis Ecclesiastici* sums up everything we have said so far on the mainstream puritan view of the law:

> We *answer*, the laws of the Jewish church, whether *Ceremonial* [52] or *Judicial*, so far forth are in force, even at this day, as they were grounded upon common equity, the principles of reason and nature, and were serving to the maintenance of the Moral Law… The *Jewish polity* is only abrogated[53] in regard of what was in it of *particular right* [first category], not of *common right* [second category]: so far as there was in their Laws either a *typology* proper to their church, or a *peculiarity* respecting their state in that land of promise given unto them. Whatsoever was in their laws of *Moral concern* or *general equity*, is still obliging…[54]

The Original Intent of *WCF* 19.4

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51 Edwards, 87.

52 The equity of the ceremonial law is well explained by Lee, 31ff.

53 The divines rightly used the word "expired" as opposed to "abrogated" when dealing with the judicial laws (first category only) in *WCF* 19.4. Note that *Jus Divinum* is also speaking of ceremonial laws which were indeed abrogated.

54 Hall, *Jus Divinum*, 240. (Also Coldwell, *Conf. Pres*., 46.)

Armed with our three prerequisites we are now in a better position to establish the original intent of *WCF* 19.4. This is not quite the same as looking for the best theological, or most biblical construction, although we would expect it to lead to the same conclusions. We simply wish to understand *WCF* 19.4 as the Westminster divines themselves understood it.

> *WCF* 19.4: To them [Israel] also, as a body politic, He [God] gave sundry judicial laws, which expired together with the state of that people, not obliging any other now, further than the general equity thereof may require. [55]

According to the most relevant definitions in the *Oxford English Dictionary* [56] (*OED*) a "body politic" is an "organized society" or a "nation in its corporate character." Both definitions were current at the time of the Westminster Assembly. The first clause is therefore relatively straightforward and little, if any, disagreement is expected as to its meaning.

The second clause has been the source of some difficulty, most of it needless, because the prerequisites have been ignored and because little attention has been given to the precise wording. The clause is generally read as if the word "sundry" was redundant or omitted altogether and as if "judicial laws" meant the whole judicial law in both its categories.

Referring again to the *OED*, "sundry" is defined as "various,"[57] "a number of" and "several." None of these meanings imply that the entire judicial law is intended. Whether or not the whole judicial law is in view cannot be determined from the use of the word "sundry" alone. It has to be inferred from the context.

Again we are dealing with current usage at or near the time of the Assembly, an obvious example of which is on the title page of *Jus Divinum Regiminis Ecclesiastici*. It bears the words: "by sundry Ministers of London" or "By sundry Ministers of Christ within the City of London," depending on

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[55] The proof texts inserted at this point are: Exod. 21, Exod. 22:1-29, Gen. 49:10, 1 Pet. 2:13, 14, Matt. 5:17, 38, 39, 1 Cor. 9:8-10. Bracketed words are added as in Ritchie, 130.

[56] *The Oxford English Dictionary*, 2nd ed. 1989, OED Online, Oxford University Press. http://dictionary.oed.com.

[57] We suggest that "sundry" was originally intended in the sense of "various kinds of." Some first category laws fenced the ceremonial law, some related to health and others to inheritance, etc.

the edition. Obviously, not every minister in London was involved with or even approved of *Jus Divinum*!

There is little point in using the word "sundry" if the entire judicial law is intended. Using the expression "sundry judicial laws" rather than "the judicial law" is more consistent with a reference to a limited subset of judicial laws than a reference to the entire judicial law. If the entire judicial law was intended by *WCF* 19.4 then the second clause would have been better phrased as: "He gave the judicial law" instead of "He gave sundry judicial laws."

The third and fourth clauses tell us that the "sundry judicial laws" of the second clause "expired together with" the Jewish nation state, and are "not obliging any other [people or nation] now." The idea of expiry fits precisely with the first category laws, laws of particular equity, which were specific to the Jewish nation and people. All obligation to such laws has now ceased, except for the essential qualification given in the final clause.

However, we also know that the second category laws which were of common, general or moral equity were understood to be perpetual, and thus not subject to expiry. The expression "sundry judicial laws" refers only to laws which expired and therefore, it could not possibly refer to laws which the divines deemed to be perpetual and universal.

Our third prerequisite enables us to understand the fifth and final clause of *WCF* 19.4. Taking the fourth and fifth clause together we have: "not obliging any other now, further than the general[58] equity thereof may require." We saw earlier how many or all first category laws were taken as ultimately moral in character and thus possessed a degree of common or general equity. William Gouge illustrates this well in his comments on the law of the Levitical tithe:

> By the judicial law the Levites had not their portion in Canaan for their inheritance, as other tribes had; therefore, in lieu thereof, by the said law, they had

[58] The word *general* is introduced in the *OED* as having roots in Anglo-Norman, Old and Middle French with the meaning of "common or applicable to all people or nearly all people." The first actual definition is probably the most pertinent: "Including, participated in by, involving, or affecting, all, or nearly all, the parts of a specified whole, or the persons or things to which there is an implied reference; completely or approximately universal within implied limits; opposed to *partial* or *particular*."

> the tenth[59] of the rest of the people… The general equity, that they who communicate unto us spiritual matters, should partake of our temporals; and that they who are set apart wholly to attend God's service, should live upon that service, is moral.[60]

Gouge makes it clear that concerning the law of the Levitical tithe, "The general equity… is moral." He would surely say the same about all other first category laws, at least where general equity could be discerned. Notice also that Gouge does not restrict the moral law simply to the Decalogue.

Finally in this section we observe that the word *thereof* [61] in the *general equity* clause of *WCF* 19.4 points back specifically to the laws which expired. It follows, therefore, that the *general equity* clause itself, like the preceding clauses, applies *only* to the same expired laws. Its purpose is to make it clear that, notwithstanding their expiry, these laws may have underlying general and moral equity which still obliges and should not be ignored. The term *general equity* is used in opposition to the *particular equity* that chiefly characterizes the expired laws.

At this point it should be clear that the focus of *WCF* 19.4 is on the first category laws only, and that it is a mistake to apply it to second category laws. Second category laws and their continuing obligation are discussed in the next section.

Second Category Laws are Covered by *WCF* 19.5

The question then arises: are the second category laws dealt with in the *WCF*, and, if so, where, and how? Before answering this we remind ourselves that these laws were seen as part of the moral law, or appendices

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[59] A literal tithe or tenth of our increase is still obligatory. Gouge is not clear on this point and may have disagreed. Tithing long preceded the law of the Levitical tithe. Abraham paid a tenth of his spoils to Melchizedek, Heb. 7:2, 4.

[60] Gouge, 2:108.

[61] Note that the use of the word "thereof" means that the equity "of" the law is in view. This differs from the idea of equity "in" the law. A statement such as "these same laws may still possess a measure of general and moral equity" as used in this article, refers to the "general and moral equity" by which the laws in question are characterized and in which they are grounded.

to the moral law. Thomas Edwards, for example, cites Matt. 5:17 as tying the judicial law to the moral:

> …he came not to destroy the Law but to fulfill it; which words are comprehensive of the Judiciall Law… (the Judicial being indeed an Appendix and a more particular explication of that part of the Morall Law concerning matters of Justice and judgement)…[62]

Assembly member Samuel Bolton tells us that the laws of common equity are moral and perpetual:

> That part of the judicial law which was typical of Christ's government has ceased, but that part which is of common and general equity remains still in force. It is a common maxim: those judgments which are common and natural are moral and perpetual.[63]

Once we understand how tightly the divines connected the second category laws to the moral law the answer to the above question becomes obvious: second category laws are quite naturally and automatically covered by *WCF* 19.5:

> The moral law doth for ever bind all, as well justified persons as others, to the obedience thereof;[64] and that, not only in regard of the matter contained in it, but also in respect of the authority of God, the Creator, who gave it.[65] Neither doth Christ, in the Gospel, any way dissolve, but much strengthen this obligation.[66]

The reader will notice that there is absolutely no indication that the requirements of the moral law are in any way relaxed, either temporally or eternally. There is no suggestion of abrogation, as in the case of ceremonial laws, or expiry, as in the case of "sundry judicial laws" particular to Israel.

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62 Edwards, 55, 56.

63 Samuel Bolton, *The True Bounds of Christian Freedom* (Edinburgh: The Banner of Truth Trust, 2001), 56.

64 Rom. 13:8, 9; Eph. 6:2; 1 John 2:3, 4, 7, 8.

65 James 2:10, 11.

66 Matt. 5:17, 18, 19; James 2:8; Rom. 3:31.

The moral law still binds all as it always did and "Christ in the Gospel" strengthens its binding obligation, rather than dissolves it.[67]

Neither does *WCF* 19.5 nor any other part of the Westminster Standards contain the slightest hint that the judicial appendices, or sanctions, have been stripped away from the moral law, or that, since the fall of Jerusalem, the civil magistrate has been relieved of his duties to enforce them.[68] Such a thought would have been repugnant to the Westminster

[67] For Rutherford the only relaxation in Biblical law is the abrogation of ceremonial laws: "More severity, and a stricter tutory to be over the Church in non-age, and under Pedagogie, we grant, Gal. 4. 1, 2, 3. But that is in regard of Ceremoniall hedges, laws, and dayes, but it is to begge the question, to say that morall transgressions are destructive, if not more, to Christian societies now as then, such as blasphemy, idolatry, heresie, that were punished with the sword then, must now be more loosed from all bodily punishment in any kind, than murther, sorcery, adultery, perjury. For the comparison of a milder Government under *Jesus*, than under *Moses*, cannot stand in fencing some moral transgressions utterly from the sword, and in leaving others lesse weighty, under as bloody punishments as ever they were." (Rutherford, *Free Disputation*, 189.)

[68] Scripture proofs used throughout the Westminster Standards regarding the law and the civil magistrate offer strong confirmation of this. An excellent short article dealing mainly with the Larger Catechism proof texts is posted at http://theonomyresources.blogspot.com/2010/06/westminster-standards-are-theonomic_4401.html.

divines.[69] Using the imagery we quoted from Ames: “the bounds and wall which defended the house” are still “reckon’d as one with the house.”

This is further confirmed by the fact that, as we have seen, the judicial appendices, i.e. second category laws, were viewed as moral and perpetual. We repeat two of our earlier quotations, which make this abundantly clear.

According to Cheynell:

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[69] Consider this extract from *Jus Divinum*:

“We have sufficient intimation of the magistrate’s punitive power in cases against the second table, as the stubborn and rebellious, incorrigible son that was a glutton and a drunkard, sinning against the fifth commandment, was to be stoned to death, Deut. xxi. 18, 19, 20, 21. The murderer sinning against the sixth commandment was to be punished with death. Gen. ix. 6. Numb. xxxv. 30, 31, 32, 33, 34. Deut x. 11, 12, 13. The unclean person sinning against the seventh commandment, was to be punished with death. Lev. xx. 11, 12, 14, 17, 19, to 25. and before that see Gen. xxxviii. 24. Yea, Job who is thought to live before Moses, and before this law was made, intimates that adultery is an heinous crime, yea, it is an iniquity to be punished by the judges. Job xxxi. 9, 11. The thief, sinning against the eighth commandment, was to be punished by restitution, Exod. xxii. i,—15, &c. The false witness, sinning against the ninth commandment, was to be dealt withal as he would have had his brother dealt with, by the law of retaliation, Deut. xix 16. to the end of the chapter, &c.

Yea, the magistrate’s punitive power is extended all to offences against the first table; whether these offences be against the first commandment, by false prophets teaching lies, errors, and heresies in the name of the Lord, endeavouring to seduce people from the true God—*If there arise among you a prophet or a dreamer of dreams——That prophet or that dreamer of dreams shall he put to death, because he hath spoken to turn you away from the Lord your God which brought you out of the land of Egypt*, &c., Deut, xiii, 1, to 6. From which place Calvin notably asserts the punitive power of magistrates against false prophets and impostors that would draw God's people to a defection from the true God, shewing that this power also belongs to the Christian magistrate in like cases now under the gospel.

Yea in case of such seducement from God, though by nearest allies, severe punishment was to be inflicted upon the seducer, Deut. xiii. 6, to 12. see also ver. 12. to the end of the chapter, how a city is to be punished in the like case. And Mr. Burroughs, in his Irenicum shews that this place of Deut. xiii 6, &c. belongs even to us under the gospel…

Or whether these offences be against the second commandment, the magistrate’s punitive power reaches them Deut xvii. 1, to 8. Lev. xvii. 2, to 8. 2 Chron. xvi. 13, 16… Or whether the offences be against the third commandment…

Besides all this light of nature, and evidence of the Old Testament, for the ruler’s political punitive power for offences against God, there are divers places in the New Testament shewing that a civil punitive power rests still in the civil Magistrate: Witness those general expressions in those texts, Rom. xiii. 3, 4. *Rulers are not a terror to good works, but to the evil. If thou dost that which is evil, be afraid, for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doth evil…*

Now (as Mr. Burroughs notes) seeing the Scripture speaks thus generally, except the nature of the thing require, why should we distinguish where the Scripture doth not? so that these expressions may be extended to those sorts of evil doing against the first as well as against the second table…”

> All divine lawes which concern the punishment of Morall transgressions, are of perpetuall obligation and therefore still remaine in force according to their substance and generall equity…[70]

Cawdrey and Palmer agree:

> Every Law of God though but Positive, which is Substantially-profitable for all men in all Ages to be obliged unto is *Moral*, that is, *Universal* and *Perpetual*, unless a clear and certain repeal of it can be showed in Scripture.[71]

Similarly, Rutherford argues:

> That which is perpetually morall, and one act of Justice at all times and places, must oblige us Christians, and the Christian Magistrate, as well as the Jewish Rulers…[72]

Remember, "perpetual" means that the divines saw these laws "according to their substance and generall equity" as always binding and never subject to change, repeal, abrogation or expiration! Civil magistrates were not to deviate from these laws. The only permissible changes were strictly *salva substantia*.[73]

There is great blessing in the precepts and judicial sanctions of God's moral law. As Thomas Manton so delightfully expresses it:

> In the precept there is the rule of man's duty, in the sanction the rule of God's judgment or judiciary proceedings with him. And wherever this law is set up, there God is said to 'judge the people righteously, and govern the nations upon

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The Divine Right of Church Government (Paisley: Printed by Neilson and Weir, 1799), 65-67. This edition of *Jus Divinum* appears to be based on the 1654 edition as used by Hall (op. cit.) in his compilation of the 1646 and 1654 editions. Note: The Hall edition is out of print. Readers are encouraged to download the Neilson and Weir edition from www.archive.org.
[Editor's disclaimer: because of Nigel Lee's theological similiarities to kinism (although we don't believe Lee's views to be as drastic), we do not endorse Lee's writings and lectures about race.]

70 Cheynell, 473.

71 Coldwell, *Conf. Pres*., 29.

72 Rutherford, *Free Disputation*, 311.

73 i.e. with the substance intact.

> earth,' Ps. lxvii. 4; that is, to set up holy and righteous decrees, fitted for the benefit of mankind.[74]

Laws without such sanctions would either be toothless, or arbitrary and left to the caprice of the civil magistrate. When God's sanctions are ignored, nations are unfortunately, at the very best, left to the vagaries of "mans reason" which in the words of Thomas Cartwright, "is even in this behalffe, shrewdly wounded."[75]

Conclusion

To conclude, we have seen that *WCF* 19.4 in all its clauses deals exclusively with the first category of judicial laws, laws which are particular to Israel. However, as indicated in the last clause of *WCF* 19.4, many or possibly all of these laws have underlying general or common equity which is of universal and perpetual obligation.

Second category judicial laws, laws of common equity, were regarded by the Westminster divines as universal, perpetual and belonging to the moral law. As such they were automatically included with the treatment of the moral law in *WCF* 19.5. It is absurd to think that the divines would have placed laws they deemed perpetual amongst the expired laws of *WCF* 19.4.

Opponents of Theonomy pretend they are merely rejecting the judicial law. The reality is far worse than that. What they are rejecting, in whole or in part, is the moral law itself. There is a word for those who reject the binding nature of the moral law. They are by definition, *antinomians*.

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[74] Thomas Manton, *The Complete Works of Thomas Manton, D.D.*, 22 vols. (London: James Nisbet, 1870-1875), 20:217.

[75] Cartwright, *Second Replie*, 97.