The Westminster Confession and Judicial Law: The Anti-Theonomic Misrepresentations of Matthew Winzer

By Vindiciæ Legis

Critique of the Section Entitled *Expiry of the judicial laws* in Matthew Winzer's article: "The Westminster Assembly & the Judicial Law: A Chronological Compilation and Analysis." Part Two: Analysis, Appearing in *The Confessional Presbyterian*, volume 5 (2009), 67-70.

Expiry of the judicial laws

Winzer samples statements from a few but well representative Westminster divines. He aims to prove, as our title suggests, that the generality of the Westminster Assembly believed that all O.T. judicial laws are now expired and, furthermore, that they held a restricted view of Matt. 5: 17. Namely that the Lord was only speaking of the moral law and not the ceremonial or judicial.

Winzer's claims concerning the Assembly's view of *Expiry* present a very different picture than that given by the London Presbyterian divine, Thomas Edwards. Although not a member of the Assembly, Edwards was the very influential lecturer at Christ Church, Newgate Street. London Presbyterian ministers had appointed him to this position, to deal with the issues of Toleration and Independency, during the time of the Assembly.

In his 1647 work on toleration, "*A Casting Down of the Last and Strongest Hold of Satan*" Edwards sees the "judicial lawes" as "the appendixes of the morall Law in matters of justice and judgement" and similarly speaks of "the morall Law and the Appendix of it the judicial Law."[1] The greatly respected puritan scholar, William Ames (1576-1633) even spoke of these appendices as part of the Decalogue: "Now as the bounds and wall which defended the house was reckon'd as one with the house," wrote Ames, "so these appendixes to the commandements make but one Decalogue."[2] To Edwards and Ames the judicial laws were inseparable from the moral law in "matters of justice and judgement." By contrast, and as we shall see, Winzer apparently views them as discarded.

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[1] 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), 110, 112. Page numbering in this work is irregular and sometimes repeated. Edwards' position on the judicial law is similar to that of Gillespie. Like Gillespie he makes extensive reference to Piscator, and agrees that the words of Matt. 5: 17 "are comprehensive of the Judiciall Law." (p. 54ff.)

[2] William Ames, *Conscience with the Power and Cases Thereof* (Puritan Reprints, 2010), 194-95. Ames is similarly cited in Ross, Richard J., "Distinguishing Eternal and Transient Law in Early Modern England: The Judicial Laws of Moses and Natural Law." No date. http://www.law.harvard.edu/faculty/faculty-workshops/ross.eternal.transient.law.march.2010.doc [27 Oct. 2010]. The author does not use the term Theonomy and classifies the puritans as *Mosaic legalists*. However, the insightful reader will see much that confirms the puritans were indeed theonomists.

In the same work Edwards, distinguishes two separate camps. The first camp is composed of "them that hold the judicial lawes totally abrogated." The second is "the generality of Orthodox Divines."[3] Although he was addressing another issue, the obvious implication is that those "who hold the judicial lawes totally abrogated" were not among "the generality of Orthodox Divines." Thus we have a conflict of opinion between Edwards and Winzer. As a Presbyterian divine and an arch defender of Presbyterian orthodoxy, active during the Assembly in London until his 1647 exile and death in Holland,[4] Edwards' opinion is definitive. Winzer's is not.

It will best suit our purpose to deal with Winzer's material in a different order from that originally given. First we will examine how he deals with George Gillespie's view of the judicial law. Along with Rutherford and others, Gillespie was chosen as a Scottish commissioner to the Westminster Assembly. He was active in debates and had significant influence on the final formulation of the *WCF*.[5] Although Gillespie is Winzer's last example, this starting point will help illustrate Winzer's methodology and cavalier dismissal of evidence that does not fit his case. Winzer writes:

> "The only writer to include the judicials in the referent of Matthew 5: 17 is George Gillespie: 'Christ's words (Matt. 5: 17), *Think not that I am come to destroy the Law or the Prophets, I am not come to destroy, but to fulfill,* are comprehensive of the judicial law, it being a part of the law of Moses' ('Chronology:' 22). It is evident, however, that he is not giving his own interpretation but is simply showing the opinion of Johannes Piscator."[6]

It is true that Gillespie is "showing the opinion" of Piscator, but it is not true that he "is *simply* showing" his opinion. On the contrary, he is quoting him with complete affirmation, adopting the words of Piscator as his own. When introducing Piscator he says:

> "I shall wish him who scruples this [the continuing judicials] to read Piscator's appendix[7]… where he excellently disputes this question, whether the Christian

[3] Edwards, 82. Edwards is addressing the issue of judicial law in the Decalogue. One example given is from the fifth commandment: "that thy dayes may be long upon the Land which the Lord thy God giveth thee." Like most modern Theonomists, Edwards here allows that many "accessories, accidentals and circumstantials" are no longer binding as long as the substance of the law is preserved. Stoning is his case in point.

[4] This happened when Cromwell's army regained control of the city of London on August 4th, 1647. Sadly, he died of an "ague" shortly after.

[5] *Westminster Confession of Faith*.

[6] *Confessional Presbyterian*, 5: 69. Quotation as in George Gillespie, "Wholesome Severity Reconciled with Christian Liberty," *The Anonymous Writings of George Gillespie*, ed. Chris Coldwell (Dallas TX: Naphtali Press, 2008), 56.

[7] Johannes Piscator, *Disputations on the Judicial Laws of Moses*, trans. Adam Brink (Junius Brutus Tractate Society, 2010), available from www.lulu.com.

> Magistrate is bound to observe the judicial laws of Moses, as well as the Jewish Magistrate was."[8]
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> "Now that the Christian Magistrate is bound to observe these judicial laws of Moses, which appoint the punishments of sins against the moral law, he proves by these reasons."[9]

Addressing the person with scruples, meaning in this context doubts and reservations, he affirms that Piscator "*excellently* disputes this question." He then quotes seven arguments from Piscator including the above reference to Matt. 5: 17, stating that Piscator "*proves* by these reasons" the continued obligation of the judicial law. Gillespie, of all people, surely would not use what he thinks is a misapplied biblical reference as proof to satisfy the scruples of a doubter! Like Piscator, as already quoted, he holds that the words of Matt. 5: 17 "are comprehensive of the judicial law, it being a part of the law of *Moses*…"

Gillespie closes his seven arguments of Piscator by stating:

> "These are not my reasons (if it be not a word or two added by way of explaining and strengthening) but the substance of Piscator's reasons. Unto which I add… yet we no where read in all the new Testament of the abolishing of the judicial law, so far as it did concern the punishing of sins against the moral law..."[10]

He makes no criticism of Piscator but in the process of adopting his reasons, he has added "a word or two" to explain and strengthen them. Furthermore, the phrase "Unto which I add" suggests he has not only adopted Piscator's reasons but also wishes to add further reasons of his own to make them more complete. Gillespie says in his own words: "yet we no where read in all the new Testament of the abolishing of the judicial law, so far as it did concern the punishing of sins against the moral law." What could be clearer?

Like the modern Theonomist he sees the judicial law as largely the judicial implementation of the moral law. Furthermore, it is a very strange idea that someone who uses the expression "we nowhere read in all the new Testament of the abolishing of the Judicial law" would think that Matt. 5: 17 excludes the judicial law. Why would Gillespie, who believes in its continued obligation, arbitrarily exclude that same law from Matt. 5: 17? Winzer produces no evidence that he does.

Rather, the evidence makes it clear that, as far as the moral law and judicial law are concerned, Gillespie would have fully supported Winzer's quotation from Greg Bahnsen:

> "Nothing in the text [Matt. 5: 17] supports a restriction of this term's referent to

[8] Gillespie, 56.

[9] Ibid., 56.

[10] Ibid., 57.

> the moral law. Jesus is saying that He did not come to abrogate *any* part of the law" (*TICE*, 48) [11] [12]

To this quotation Winzer adds the following footnote:

> "It should be noted that Greg Bahnsen does not accept that any law has been set aside, including the ceremonials. The ceremonial system is simply regarded as having been made ineffective by its fulfilment in Christ, and for that reason it is not to be practised by believers in the New Testament. For a discussion of this point see Greg L. Bahnsen, *TICE*, 209, 210."

Although he sees the ceremonial law abolished as far as any ritualistic observance is concerned, Gillespie would surely agree with Bahnsen that Christ came to confirm it by making complete satisfaction for the sins of his people and in his continuing high-priestly intercession for them. The reader of "*TICE*, 209, 210" and the surrounding pages, will see that Bahnsen fully agrees with the *WCF* that the ceremonial law is abrogated in the sense that "it is not to be practised by believers in the New Testament." But that is an entirely different point from the one he is making in the above quotation.

Bahnsen's position on the inclusion of the ceremonials in Matt. 5: 17 is just the same as Calvin's:

> "With respect to ceremonies, there is some appearance of a change having taken place; but it was only the use of them that was abolished, for their meaning was more fully confirmed. The coming of Christ has taken nothing away even from ceremonies, but, on the contrary, confirms them by exhibiting the truth of shadow."[13]

Winzer attempts to demonstrate that the Westminster divines used a "restrictive" interpretation of Matt. 5: 17, 18 which limited the reference to the moral law alone.[14] He claims they excluded the ceremonial and judicial laws. In doing so, he ignores the facts that such a restriction would be completely arbitrary and that the ceremonial and judicial laws have their lasting foundation in the moral law.

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[11] *Confessional Presbyterian*, 5: 69.

[12] Greg L. Bahnsen, *Theonomy in Christian Ethics* (Nutley, New Jersey: The Craig Press 1979).

[13] John Calvin, *Commentary on a Harmony of the Evangelists, Matthew, Mark and Luke,* trans. William Pringle, 3 vols. (Edinburgh: The Calvin Translation Society, 1845), 1: 277, 278.

[14] This is a remarkable claim by Winzer in the light of this statement in *Jus Divinum*: "We *answer*, the Laws of the Jewish church, whether *Ceremonial or Judicial*, so far 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." *Confessional Presbyterian*, 5: 46. It also compares well with Bahnsen's view of the ceremonial law.

Any fair reading of Gillespie shows that he did not subscribe to such restrictionism, at least as far as the judicial law is concerned. However, Winzer quotes four other Westminster divines to prove his thesis that the Assembly, as a whole, approved a restricted interpretation of this verse.[15] He quotes Samuel Rutherford:

> "God commandeth as a Law-giver in the Gospel, all that eternall righteousnesse which hee commandeth in the Law; for neither the Gospel, nor Christ dissolveth one tittle or jot of the eternall Morall Law of God" *(Spirituall Antichrist*, 2.120).[16]

Rutherford mentions only the moral law in this allusion to Matt. 5: 18. But his act of including the moral law does not, by itself, mean that the ceremonial and judicial laws are excluded. After all, a statement simply showing that A is included, is not proof that B and C are excluded. This quotation, therefore, does nothing to demonstrate "restrictionism" on Rutherford's part. It does not settle the issue, one way or the other, especially when an allusion is used rather than a quotation.

What Winzer fails to tell his readers is that the context is antinomianism, not the dissection of the law into its various parts. Rutherford is refuting the antinomian heretic, John Saltmarsh. The emphases of antinomianism are that believers are no longer under the moral law and that, in large measure, it may no longer be enforced by the civil magistrate. In such a context, George Gillespie or even Greg Bahnsen could have made a similar allusion to Matt. 5: 18!

However, it is important to realize that Rutherford and some other divines differed with Gillespie in their terminology. This has given the appearance of conflict, when in reality they were in substantial agreement. This difference in terminology is fully recognized by both Edwards and Assembly member William Gouge, as we will see later in this critique. It reflects the fact that the puritans divided the judicial law into two separate categories.

Gillespie used the term *judicial law* in a sense which recognized that only that which was particular to Israel has expired and that which upholds the moral law still remains. This can be seen from our earlier quotation, "yet we nowhere read in all the new Testament of the abolishing of the Judicial law, so far as it did concern the punishing of sins against the Moral law."

Rutherford, on the other hand, frequently uses the term judicial law more narrowly to mean what was particular to Israel and not general to all nations. For example, the words "temporary" and "judicial" are used together about five times in his *A Free Disputation*

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[15] Anyone who thinks the Westminster divines restricted Matt. 5: 17 to the moral law should consider that they included the judicial as part and parcel of it in their section *Of Particular Congregations* in *The Form of Church Government* and referenced Deut. 15: 7, 11. See Daniel F. N. Ritchie, *The Law is Good, A Defence of Judicial Calvinism* (Reformed Worldview Books, 2010), 136-138, available from www.lulu.com.

[16] *Confessional Presbyterian*, 5: 69.

Against pretended Liberty of Conscience. However, on at least one occasion, he makes essentially the same distinction as Gillespie:

> "*Judiciall Laws* 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… yet that some punishment by the sword, be inflicted upon such a City, is of *perpetuall* obligation; because the Magistrate beares the sword to take vengeance on ill doers…"[17]

Judicial laws are by implication, "obligatory to us" but a qualification is needed for those Judicial laws which are purely "Mosaicall." These laws are also of "perpetual obligation" but not in "the degree and quality of punishment." No modern Theonomist would disagree.

Rutherford's example of God's command to destroy a city is a telling one. It is usually seen as particular to Israel and as having expired with the destruction of that nation. However, he recognizes the "morall equity"[18] of that law has "perpetual obligation."

Except in the quotation above, he generally refers to judicial laws upholding the moral law not as judicial but as moral, which they indeed are. Some others among his contemporary divines did the same thing. This has lead to the mistaken claim occasionally made in our own day, that Rutherford and those who used his terminology had dismissed the judicial law and were not theonomic. However, the following extract demonstrates exactly how Rutherford applied the moral-judicial case laws:

> "That which is morall, and cannot be determined by the wisdome and will of man, must be determined by the revealed will of God in his word; but the punishment of a seducing Prophet… is morall and cannot be determined by the wisdome and will of man: *Ergo*, such a punishing of a seducing Prophet, must be by the revealed will of God in his word. The Proposition is proved 1. Because God only, not *Moses*, nor any other law-giver under him, taketh on him to determine death to be the adulterer's punishment, *Levit*. 20. 10. And the same he determineth to be the punishment of willful murther [murder], *Exod*. 21. 12. *of smiting of the Father or Mother*, v. 15. of *Man-stealing*, vers. 16. of *Sorcery*, Exod. 22. 18. of *Bestiality*. 19. *Of sacrificing to a strange God,* vers. 10. And upon the same

[17] Samuel Rutherford, *A Free Disputation Against Pretended Liberty of Conscience* (London: Printed by R. I. For Andrew Crook, 1649), 298. It should interest the reader that pages 310 to 333 of this book are headed: *Judicial Laws in their morality oblige Christians*.

[18] Ibid., 206. The equity of the law can be described as *moral*, as we see here in Rutherford, as *general* as in the *WCF* 19.4, or as *common*. The label *moral* stresses that, judicial or otherwise, it is ultimately the equity of the moral law. *General* stresses the universal nature of the equity as opposed to something that is *particular* to Israel alone. Similarly, *common* stresses that it is *common* to all nations.

> reason, God only, not any mortal man, must determine the punishment due to such as seduce soules to eternal perdition…"[19]

So there we have it: for Rutherford, natural law and human deduction fail in such cases. Therefore the punishment must be determined from the "the revealed will of God in his word." "God only, not Moses, nor any other law-giver under him" is the determiner of the punishment, at least where the death penalty is concerned.

Where exactly in the scriptures does Rutherford seek for God's determinations? It is clear that he seeks for them in the moral-judicial case laws. Besides the case of a false, seducing prophet, he lists, giving chapter and verse in the judicial law: *adultery*, *willful murder*, *smiting parents*, *man-stealing*, *sorcery*, *bestiality*, and *sacrificing to a strange God*.

We can now see that even if Rutherford would, as a matter of terminology, restrict Matt. 5: 17 to the moral law, much of the judicial law would be included as upholding it, or as Edwards said, an "Appendix of it." Even the law requiring the destruction of a city seduced into idolatry, though particular to Israel in most of its details, has moral equity which, to him, is of "perpetual obligation." He would have no reason to exclude it from the scope of Matt. 5: 17.

There are a couple of instances claimed as evidence that Rutherford was not really theonomic. The first concerns Sabbath breaking and Rutherford's contention that the death penalty no longer applies in this case. If he was a theonomist, it is argued, he would never see a judicial penalty as cancelled without warrant from the New Testament.

However, this is a misrepresentation because his position was that that the death penalty was originally required because Mosaic Sabbath observance was augmented by the ceremonial law. Now that the ceremonial law is no longer to be observed, neither are the death penalties associated with it.[20] Another Westminster divine, William Gouge held a similar view of the Jewish Sabbath.[21]

The other instance concerns Rutherford's un-theonomic substitution of whipping in place of restitution for the crime of theft.[22] Given his usually consistent application of the

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[19] Ibid., 309.

[20] Sinclair Ferguson appears to be the source of this error. It is well refuted in Martin A. Foulner, *Theonomy and the Westminster Confession* (Marpet Press, 1997), 21n.

[21] "He that gathered sticks on the Sabbath day and was stoned. Numb. xv. 32, &c., offended against the ceremonial law; for howsoever the Sabbath be a part of the moral law, yet the strictness of not kindling the fire thereon, Exod. xxxv. 3, against which that man transgressed, was a part of the ceremonial law." William Gouge, *A Commentary on the whole Epistle to the Hebrews*, 3 vols. (Edinburgh: James Nichol, 1867), 2: 347.

[22] Rutherford, *Free Disputation*, 299.

"moral equity" of the law in other cases, this must be seen as an inconsistency, a miscalculation of the requirements of "moral equity."

Whipping instead of restitution fails to provide morally equitable treatment for the victim of the crime. Only with adequate restitution, entirely at the thief's expense, are the victim and society treated fairly. Remember also that single restitution alone does nothing to punish the thief. Simply being made to return stolen goods is neither punishment nor deterrent. In merely returning the goods the thief suffers no net loss, and he has had time to benefit from their use or sell them, potentially at a profit, even after their return in kind. Ames takes a much more biblical position than Rutherford.[23]

We can now consider Winzer's other quotations which are also purported to show that the divines "restrict the referent [of Matt. 5: 17] to the moral law." He quotes Assembly member, John Ley's exposition of Matt. 5: 17 thus:

> "they hearing the law otherwise expounded than their teachers used to do, verse 21, 22, might think that Christ did abrogate the moral Law, and bring in a new one: he warns them before hand, not to think so; ... the moral Law stands still in force."[24]

However, Winzer is totally wrong and misleading because hidden in the ellipsis of his quotation, are these very words, "all was fulfilled in the Messias exhibited, with all the ceremonies thereof prefigured…" Ley clearly includes the ceremonial law as a referent of Matt. 5: 17. A little later in his exposition of the same verse, Ley continues by explaining his understanding of "but to fulfil":

> "Both by instruction, observation, and full satisfaction. Rom. 3. 31 & 8. 3. others take it of the fulfilling the ceremonies, types and predictions of the Messias in his own person, which he likewise did."

Interestingly, at the end of Ley's exposition of Matthew some omissions from previous editions are listed in the third edition: "to destroy the law," is interpreted as "to overthrow; as here by abrogating, repealing or rendring it no longer binding" and also "to dissolve." These are things, our Lord came *not* to do. Ley, therefore, like Calvin before him, does not see the ceremonial law as abrogated except in Calvin's and the *WCF* sense that it was "only the use of them that was abolished."

According to Ley "the moral Law stands still in force." Winzer fails to recognize that enforcement is judicial. If it remains in force, then it is judicially enforced by the moral-judicial law. God himself will enforce it and when he calls for penalties, he obliges the civil magistrate to enforce it also. This is a principle our Lord makes clear in the remainder of Matt. 5.

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[23] Ames, 117ff, 264-265.

[24] John Ley, "Annotations on the Gospel according to S. Matthew," *Annotations Upon all the Books of the Old and New Testament*, 3rd ed., 2 vols. (London: Printed by Evan Tyler, 1657) 2: n.p.

As with Rutherford, Ley's not mentioning the judicial law in his comments on Matt. 5: 17 does not mean that he excludes it. As explained, his words "the moral Law stands still in force" imply enforcement, which makes it appear that he includes the moral-judicial law as having and upholding "moral equity" in much the same way as Rutherford.

Let us now examine Winzer's three remaining quotations which he alleges indicate a restrictionist view of Matt. 5: 17. They are taken from Westminster divines, John Lightfoot and Anthony Burgess.

> "When the Ceremonial and Judicial Law have thus brought us to Christ, we may shake hands with them and farewell, but for the Moral, as it helps to bring us thither, so must it help to keep us there. For Christ came not to disannul this Law, but to fulfil it."[25] (Lightfoot)
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> "When our Saviour, Mat. 5, gave those severall precepts, he did not adde them as new unto the Morall Law, but did vindicate that from the corrupt glosses and interpretations of the Pharisees."[26] (Burgess)
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> "Mat. 5, he denied that he came to dissolve the Law.... Now it may be easily proved, that the Ceremoniall, and Judiciall lawes they are abrogated by expresse repeale.... We cannot say, in any good sense, that the Morall Law is abrogated at all."[27] (Burgess)

Lightfoot, as the context and the quotation show, is speaking of salvation in Christ and the place of the moral law in the believer's life. He is saying that the ceremonial and judicial laws have been instrumental in bringing the believer to Christ and that part of their work is finished. The moral law still continues as believers persevere in the faith. Consistent with the moral law helping "to keep us there" in Christ, he includes in a separate passage, the broad details of Christian worship in the moral law.[28] Rather than restricting the referent of Matt. 5: 17, he seems to be affirming that Christ fulfils the demands of every division of the law in the accomplishment and application of our redemption.

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[25] John Lightfoot, *The Whole Works of the Rev. John Lightfoot D.D.* ed. John R. Pitman, 13 vols. (London: Printed by J. F. Dove, 1822), 4: 82.

[26] 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), 152.

[27] Ibid., 211, 212.

[28] Lightfoot, 6: 264. "[H]e perpetuated the worship of the synagogue, reading the Scriptures, praying, preaching, and singing of psalms, &c. transplanted them into the Christian church as purely moral."

Given the limited context, and only a brief allusion to Matt. 5: 17, Winzer's quotation does not provide a reliable indicator of how Lightfoot would interpret the verse in a more general context. However, when dealing with it at length in his *Horae Hebraicae et Talmudicae*, he certainly does not limit its referent in any way.[29]

Even so, it would not have been entirely surprising if Lightfoot had turned out to be a restrictionist. It would simply suggest that, as an Erastian, he had been more influenced by John Whitgift than by Thomas Cartwright.[30]

The first of the two Burgess citations simply says of Matt. 5 that our Lord added nothing new to the moral law but rather vindicated it from "corrupt glosses and interpretations." There is no indication of restrictionism here.

The second citation says of the ceremonial and judicial laws that "they are abrogated by expresse repeale"[31] and therefore it is essential to know the exact sense in which he is using the term judicial law. If Burgess is using the term in its wider sense for the whole of the judicial law, then he is obviously a restrictionist. But if, like Rutherford, he is using it purely for the strictly Jewish content of the judicial law, then he is not setting a restriction as far as the generality of the judicial law is concerned. He is simply subsuming it within the moral law.[32]

Burgess devotes three consecutive lectures (28 - 30) in *Vindiciae Legis* to Matt. 5.[33] His stated purpose is "to set forth the dignity of the Morall Law."[34] In them he makes

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[29] Lightfoot, 11: 97. On Matt. 5: 17, "Think not that I am come to destroy the law… III. He meets with this prejudice here and so onwards by many arguments, as namely, 1. That he abolished not the law when he abolished [Pharisaically obtruded] traditions; for therefore he came that he might fulfil the law. 2. That he asserts, that 'not one iota shall perish from the law.' 3. That he brought in an observation of the law much more pure and excellent than the Pharisaical observation of it was: which he confirms even to the end of the chapter, explaining the law according to its genuine and spiritual sense."

[30] See discussion in John Whitgift, *The Works of John Whitgift, D.D.* 3 vols. (Cambridge: The Parker Society, 1851), 1: 270-278.

[31] This would seem to be an overstatement because we nowhere read in Scripture of the repeal of even the strictly Jewish aspects of the judicial law. The expiry was only final when Jerusalem was destroyed in AD 70, after the canon of Scripture was completed. Some would assign a later date to the book of Revelation.

[32] It is interesting to see just how broadly Burgess sees the scope and administration of the moral law. His next sentence following the first of the two citations is: "Indeed it may seem hard to say that Christ, and justifying faith, & the doctrine of the Trinity, is included in this promulgation of the Law; but it is to be proved, that all these were then comprehended in the administration of it, though more obscurely."

[33] The 3 lectures are all headed "Matth. 5. 21, 22." All are sub headed "*Ye have heard it hath been said by them of old, &c*." (one has an extra clause). In these lectures Burgess deals with some remaining verses of Matt. 5 and other passages.

[34] Burgess, 184.

several appeals to the judicial law.[35] In one such reference, he deals with the Lex Talionis, which he sees as a law against private revenge, and never intended to be taken in a literal sense.[36] We would therefore be assuming inconsistency on the part of Burgess if we assumed he intended the wholesale abrogation of the entire judicial law.

As with Rutherford, the problem is one of correctly interpreting terminology. The term *judicial law* was used by the Westminster divines in more than one sense. It would seem that this difference was well understood at the time. A great deal more friction and contention might have been expected in the debates if it were not so.

Thomas Edwards reports a basic "distinction" made by divines[37] between two categories of judicial law: (1.) "judiciall lawes properly so called… which had a singular respect to the people of the *Jewes*" and (2.) "those lawes which were wont to be reckoned among the judicials, and yet had no singular respect or relation to the condition of the *Jewes* more than to other people," he adds, "all those are of morall natural right common to all people…"[38] Thus there are two different senses in which a divine might use the term "*judicial law*." Usually, when it has no qualifier such as "*of common equity*," it refers to the Jewish laws.

William Gouge makes the same distinction and says of the latter kind, "There were… branches of the judicial law which rested upon common equity and were means of keeping the moral law." For Gouge, those judicial laws not specifically Jewish uphold the moral law. They may be adopted by other nations as "good directions to order even Christian polities," or other laws may be written which are consistent with "equity and piety."[39]

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[35] Simply listing passages from the Pentateuch as Burgess references them, we have: Num. 35: 30, Lev. 19, Ex. 23: 4, Deut. 6, Ex. 21: 23, Deut. 19: 19, Gen. 9: 6, Lev. 19: 16 (he means 19: 18), and Num. 31: 3.

[36] Ibid., 188.

[37] Two such divines would have been Edwards' predecessors, William Perkins and William Ames. He is essentially quoting Ames, 109. Perkins wrote: "Judicial lawes of Moses according to the substance and scope thereof must be distinguished… they are of two sorts. Some of them are lawes of particular [to the Jews] equity, some of common [to all nations] equity." William Perkins, *A Discourse of Conscience* (Cambridge: John Legate, 1596), 17.

[38] Edwards, 77, 78.

[39] Gouge, 2: 123, "Besides the ceremonial law, the Jews had a judicial law, proper and peculiar to that polity. This law concerned especially their civil estate. Many branches of that law appertained to the Jewish priesthood; as, the particular laws about the cities of refuge, whither such as slew any unawares fled, and there abode till the death of the high priest. Num. xxxv. 25. And laws about lepers, which the priest was to judge. Lev. xiv. 3. And sundry other cases which the priest was to judge of, Deut. xvii. 9. So also the laws of 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; of all manner of freedoms at the year of jubilee, Lev. xxv. 13, &c.

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 willful murderers, and other notorious malefactors. So likewise laws against incest and incestuous

Gouge is not speaking of equity in the abstract. He has just mentioned the "common equity" of the judicial law and, elsewhere in the same commentary he states, "God's laws are the rule of righteousness; from them all laws take their equities."[40] Of those whom God has placed in power he says, "Their rule must be God's law, and they ought to command nothing but what is according to that law."[41]

Assembly member Samuel Bolton also sees the judicial law as an appendix to the Decalogue (second table) and distinguishes two separate "parts." One has ceased, the other is "moral" and perpetual."

> "As for the judicial law, which was an appendix to the second table… 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."[42]

Confusion can be avoided by carefully discerning which one of Edwards' two senses a divine is using for the term, *judicial law*. We have seen that Gillespie uses it in the latter sense and Rutherford uses it mostly in the former, more limited sense. Winzer has more work to do if he wishes to prove Ley, Lightfoot or Burgess were restrictionists as far as Edwards' latter sense of the *judicial law* is concerned.

Even if any or all of these three divines believed in the total abrogation of the judicial law, in both senses of the term, it would only mean that theirs was a minority opinion in the Westminster Assembly and placed them outside of what Edwards called "the generality of Orthodox Divines." *WCF* 19.4 makes it clear that the majority affirmed the *general equity* of the judicial law to be of continuing obligation. It is *general*, i.e. universal, binding on all nations, and not just *particular* to Israel alone. That minority, if it even existed, must have been very small, or too far out of the mainstream, because no attempt to accommodate it appears in the final wording of the Confession.

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marriages; laws of reverencing and obeying superiors and governors; and of dealing justly in 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.

The former sort were abolished together with the priesthood.

The latter remain as good directions to order even Christian polities accordingly…

[Liberty] God affordeth to others to have laws most agreeable to their own country, so as they be not contrary to equity and piety."

[40] 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.

[41] 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 this to the Decalogue.

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

(We can note here that Winzer, in the next section of his article, attempts to downplay and virtually nullify the meaning and intent of *WCF* 19.4. This will be dealt with separately when we come to consider that section.)

Finally, we will deal briefly with some quotations that Winzer asserts confirm his "hermeneutic of radical discontinuity."[43] We can perhaps be forgiven for pointing out that such a term sounds far more like dispensationalism than covenant theology! Westminster divines Daniel Cawdrey and Herbert Palmer, on the other hand, share exactly the same covenantal hermeneutic as Greg Bahnsen. They write:

> "*the silence of the New Testament concerning a law, expressly and clearly delivered in the Old Testament, is a confirmation rather than an abrogation of it, or* [than] *an intimation that it has expired…*"[44]

And Bahnsen is in complete agreement:

> "our *presumption* must be that of *continuity* with the *standing laws* of the Old Testament…"[45]
>
> "*God's law is binding in every detail until and unless the Lawgiver reveals otherwise…*"[46]

Winzer, however, cites Cawdrey and Palmer to support "radical discontinuity." His citations are to the effect that an "expired law" [Winzer's words] is "now out of date," "manifestly ceased," and "at an end in respect of obligation."[47] It is certainly an odd kind of logic that regards tautology as proof!

Thanks to the truly excellent work done by Chris Coldwell in Part I of this article, a few more quotations from Palmer and Cawdrey are appended which tell a completely different story than that attempted by Winzer in Part II—one that is completely consistent with modern Theonomy.

Winzer next cites Anthony Burgess: "And thus for the Judicial Laws because they were given to them as a politick body, that polity ceasing which was the principal, the accessory falls with it."[48] As explained above, Winzer must show which of Edward's two

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[43] *Confessional Presbyterian*, 5: 68.

[44] Ibid., 5:29

[45] Greg Bahnsen, *By this Standard, The Authority of God's Law Today* (Tyler, TX: Institute for Christian Economics, 1985), 6.

[46] Ibid., 270.

[47] *Confessional Presbyterian*, 5: 13, 29.

[48] Ibid., 5: 43.

senses Burgess is using for the judicial law. Burgess and modern Theonomists are in full agreement if, as one might reasonably expect, he is using it in the first sense. [49]

Rutherford is quoted as saying, "we conceive, the whole bulk of the judicial Law, as judicial, and as it concerned the Republic of the Jews only, is abolished."[50] Rutherford makes it abundantly clear in the third and fourth clauses of the quotation itself, which of Edwards' senses he is using for the judicial law. And from the context, his examples are, "the debarring of the leper seven days," "the boring with an Aule the ear of him that loved his master," "the man that gathered sticks on the Sabbath"—we saw earlier that Rutherford believed the death penalty to be ceremonial in this case—and "he that would marry a captive woman of another religion."

Lastly in his evidence of "radical discontinuity," Winzer quotes Assembly member Daniel Featley, "The ceremonial and the judicial are not now in force; but the moral is."[51] The same problem arises, we ask in what sense is Featley using the word judicial?

Later in this section of his article, Winzer offers the "further criticism" that the proof texts, Matt. 5: 17 and 1 Cor. 9: 9, 10,[52] for *WCF* 19.4 are used by Bahnsen in a way that "contradicts" its "fundamental assertion" of "the obliging nature of the general equity in the judicial laws." Bahnsen is faulted for using the proof texts "to teach that the judicial laws themselves are still authoritative and binding."[53]

Not only does Winzer overreach by alleging a contradiction when it is obvious that none exists, but he also misstates and misconstrues the teaching of *WCF* 19.l4. The *WCF* affirms the obliging nature of the general equity *of* the judicial law, not "the general equity *in* the judicial laws." As Bahnsen rightly says, these are "logically distinct and philosophically different" notions.[54]

In the logic of the divines the *substance* and *equity* of the judicial law were inseparably bound up with each other. Non-essential details were called "accessories,

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[49] Are we really to expect that Burgess was diametrically opposed to Ames, Gillespie, Cawdrey, Palmer, Edwards and other divines on such an important issue?

[50] Ibid., 5: 36.

[51] Ibid., 5: 25.

[52] The *WCF* proof text in question is actually 1 Cor. 8, 9, 10.

[53] *Confessional Presbyterian*, 5: 69, 70.

[54] See Greg Bahnsen, "The Westminster Assembly and the Equity of the Judicial Law." *Penpoint* Vol. IV:7, Oct. 1993. http://www.cmfnow.com/articles/pe170.htm [25 Oct. 2010]. Bahnsen takes Sinclair Ferguson to task for making the same error. Winzer appears to be recycling this and other errors made by Ferguson. [Disclaimer: Regrettably, Covenant Media today promotes Federal Vision, a heresy Bahnsen himself would have rejected.]

accidentals and circumstantials,"[55] etc. Only these, such as stoning instead of other forms of capital punishment, or strictly Jewish elements, were no longer binding.

Edwards has an interesting passage which sheds a very different light on the likely intent of 1 Cor. 9: 9, 10 as a proof text for *WCF* 19.4:

> "*Weems* in his *Christian Synagogue*… showes, in which cases when the spiritual is fulfilled eminently, the literal is not abolished… I might give many instances, but shall onely name one… *Deut*. 25. 4. *Thou shalt not muzzle the mouth of the Oxe which treadeth out the Corne*. Now though the spiritual sense… be the not muzling the mouth of Ministers who labour in the Gospel 1 *Cor*. 9. 9. yet the litteral sense holds stil that a man should forbeare *to muzzle the mouth of the Oxe which treadeth out the Corne*, or at least tis not unlawful to forbeare."[56]

To Edwards, as to the Scottish divine John Weems[57] before him, the spiritual use of the judicial law in the N.T. was no sign that the literal sense was abolished.

In his sampling of divines, Winzer has misstated the view of John Ley on Matt. 5: 17. His comments about Gillespie are thoroughly misleading and he withholds key information about the context of Rutherford's allusion to Matt. 5: 18. He also fails to demonstrate that Rutherford, Ley, Lightfoot or Burgess, etc., taught anything more than the expiry or abrogation of those aspects of judicial law which, by their very nature, pertained exclusively to Israel. All modern Theonomists believe in that kind of expiry.

Thomas Edwards, on the other hand, was of the opposite opinion to Winzer about the position of the Westminster divines. He should have known because he was there, in London, at the time.

[55] Edwards, 82.

[56] Edwards, 170, 171.

[57] Also Weemse, Weemes or Wemyss.

More Quotes from Daniel Cawdrey and Herbert Palmer
(All are taken from The Confessional Presbyterian, Vol. 5, 2009)

"*That whatsoever law of GOD*, or Command of His, *we find recorded in the Lawbook*, in either of the Volumes of GOD's Statute, the N.T. or the Old, *Remains obligatory to us, unless we can prove it to be expired or repealed*." (Herbert Palmer, 13)

"*Every Law of God (though Positive) recorded in the Scripture is Moral and Perpetual, unless it be afterward found Repealed by God, or Expired in the Nature of it*." (Cawdrey and Palmer, 28)

"And so we suppose we may, upon just reason infer, that *the silence of the New Testament concerning a law, expressly and clearly delivered in the Old Testament, is a confirmation rather than an abrogation of it, or* [than] *an intimation that it has expired*… we must needs hold, that *all the Laws of the Old Testament are perpetuated to this day, if be nothing against them in the New Testament by way of repealing them: or at least in reason*, which might plead for an *expiration*. 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." (Cawdrey and Palmer, 29)

"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 repeal of it can be showed in Scripture." (Cawdrey and Palmer, 29)