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"The Westminster Assembly and the Equity of the Judicial Law"

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This year we celebrate the 350th anniversary of the calling and convening of the Westminster Assembly (1643-1649), that body of theologians who produced the grand expression of Reformed doctrine in the Westminster Confession of Faith and Catechisms.

Those who love the faith once delivered to the saints should rejoice in the memory of this epochal event and savor the soundness of the theological standards which are the assembly's enduring legacy. The achievement at Westminster was profound for the history of both church and state.

Political Setting

King Charles I of England, who favored Romanism and hated the Puritans, had earned disdain for himself by appointing two persecuting courts under his reign: the Star Chamber (civil) and the High Commission (church). In 1629 he dared to dissolve the English Parliament and ruled without it until 1640.

When he at-tempted to impose episcopalianism and a new prayer book on the church in Scotland, the Scots signed a "National Covenant" in 1638, an oath to resist this intrusion, maintaining religious liberty and presbyterian polity. War erupted in 1639.

This compelled the King to reconvene the English Parliament in April, 1640, to raise funds, but he promptly dissolved it again (thus the "short" Parliament) when it addressed several grievances to him. However, in desperation he again convened Parliament in November (the "long" Parliament), finding to his dismay that it was now determined to take the government of England into its own hands.

In 1642 the King fled London, and civil war broke out between the royalists (Anglicans and Romanists) and the parliamentary party (aligned with the Puritans, of presbyterian and separatist varieties). The battle against absolutism in both state and church became the Puritan heritage.
Theological Reform

On June 12, 1643, Parliament passed an ordinance "for the calling of an Assembly of learned and godly Divines... for the settling of the government and liturgy of the Church of England, and vindicating and clearing of the doctrine of said Church from false aspersions and interpretations." It was an assembly truly representative of the English realm and a wide diversity of theological opinions. It originally met on July 1, 1643, at Westminster Abbey.

That same summer Parliament entered into "The Solemn League and Covenant" with Scot-land, agreeing to reform the English church in doctrine, worship and government so as to secure religious uniformity between Scotland, Ireland, and England. Accordingly, eight Scottish commissioners joined the Westminster Assembly and exercised considerable leadership in its deliberations and direction. The best known of them were Henderson, Baillie, Rutherford, and especially George Gillespie.

Between August, 1644, and December, 1646, the Westminster Assembly wrote 33 chapters systematically covering the fundamental doctrines of Scripture and the pressing religious issues of the day. In April, 1647, the Assembly acceded to the request of the House of Commons, and appended Scriptural proof-texts in the margins of the Confession. By the end of the year a Larger and a Shorter Catechism had been added for teaching adults and children, respectively, the Reformed theology set forth in the new Confession of Faith.

These standards were adopted by the Church of Scotland, but only temporarily and in modified form in England. However, they came to be the "subordinate standards" (secondary to Scripture) throughout the presbyterian churches of the world -- for instance, adopted in America in 1729 -- and represent the crowning apex of the Protestant creeds which stem from the Reformation.

Civil Law

Quite clearly, the Puritan zeal for Reformed theology was not, given the turmoil of their day, inimical to socio-political concerns. God's infallible word in Scripture, whose authority they confessed to be superior to all human opinion and traditions, was the moral standard for all conduct in every area of life. This included civil affairs. Given the degenerating condition of modern society, with a frightening escalation of criminal activity yet near-total failure of our present penal system, it is not unreasonable for those who love the Reformed faith and its full-orbed, Biblical worldview to ask what our Puritan forefathers confessed about God's justice in the area of civil law. Could their voice from 350 years ago speak to us with greater Scriptural consistency and soundness than the confused opinions of our own weak and wayward generation?

What did the Westminster theologians say about those provisions in Scripture which address civil magistrates and the punishment of crime, particularly those civil norms found amid the "judicial laws" of Moses (e.g., Exodus 21-22)?

In chapter 19, section 4, the Confession teaches us: (1) God gave "sundry" judicial laws to Israel "as a body politick"; (2) these "expired" along with that state; (3) that which is now obligatory in those laws is what "the general equity thereof may require" -- but (4) nothing further.

The popular attitude of our generation -- both outside and inside the Christian church (which is a commentary in itself) -- is that the civil laws of the Mosaic revelation are outlandish, out-dated, and surely not morally acceptable for modern states. Those who, like "theonomists," do not repudiate the moral validity and use of the Mosaic judicial laws in contemporary political affairs have scorn heaped upon them as anachronistic fools or dangerous tyrants. Today even theologians who claim to be "Reformed" widely ridicule or emphatically reject the theonomic endorsement of the validity of Old Testament civil laws.

But we should honestly ask: who is closer to the Reformed theology of the Westminster Confession on this point today, theonomists or their detractors?

Even as hostile a critic as Meredith Kline had to concede that the Westminster Confession and Catechisms are theonomic in perspective (Westminster Theological Journal, v. 41, 1978, pp. 173-174). Taking a more detailed look at this question, Sinclair Ferguson later had to acknowledge that section 19.4 in the Confession is indeed consistent with the theonomic position, and that there is a "practical" coincidence between the views of the Westminster commissioners and the civil applications of the theonomic view today (Theonomy: A Reformed Critique, eds. Barker & Godfrey, Zondervan, 1990, pp. 329, 334, 347).

His only hope was to show that the Westminster Confession does not strictly require a theonomic interpretation (pp. 345, 346, 348-349). Yet even in contending for this diminished thesis, the precision of Ferguson's article slips, as he overstates and thus misconstrues the theonomic view of "general equity" (pp. 331, 343, 347), and exegetically confuses the notion of an "equity" found in the law with the logically distinct and philosophically different notion of "the equity of the law" (pp. 330-331).

Reading the Confession in Context

When the Westminster theologians spoke of the "general equity of" the judicial laws, they referred to the underlying moral principle which is illustrated by the particular cases mentioned in the judicial laws. Thus in Confessional context we find that they offered as a proof text the example of 1 Cor. 9:8-10 -- which applies the illustration of the muzzled ox (via the underlying principle) to the case of the unpaid pastor. This same kind of treatment is found throughout the Larger Catechism's exposition of the Ten Commandments -- where Old Testament case laws are readily cited as authoritative, although given modern application (e.g., #135 regarding rooftop railings).

In historical context we can confirm that the above understanding is what the Puritans meant by the "equity" of the law. For instance, in 1575 Thomas Cartwright spoke of the judicial law, saying "the prince and magistrate, keeping the substance and equity of them (as it were the marrow), may change the circumstance of them, as the times and places and manners of the people shall require." The cultural form may be altered, but the "marrow" or underlying "substance" is perpetually required. (By the way, Cartwright found such perpetual equity in the death penalty for blasphemy, adultery and incest! William Perkins found it in capital punishment for witches. Philip Stubbs said of the death penalty for blasphemy, "which law judicial standeth in force to the world's end." See the Journal of Christian Reconstruction, v. 5, 1978-79, pp. 30, 31.)

For the Westminster Puritans, the substance of the judicial laws was just as binding as the Ten Commandments. The judicial laws served to give definition to the Ten Commandments; to invalidate the former would therefore be to invalidate (or alter) the former. That is why we read that, according to the Westminster standards, the Decalogue is not the full extent of the moral law, but rather the "summary" of the moral law (Larger Catechism #98). We are bound to the whole moral law and not simply its summary expression.

Notice, next, that the writers of the Westminster Confession were quite precise in their declaration about the judicial laws of Moses. According to them these laws were not "abrogated," which is the language used of the ceremonial law (19.3), which was set aside due to the change of covenantal administration from Old to New Covenants (7.5-6).

The Confession teaches us, not that the judicial laws were abrogated, but rather that they "expired" due to the expiration of Israel as a "political body." When the particular political body for which they were worded passed away, the literal wording or specific form of the judicial laws was put out of gear. Only the underlying principle ("equity") of those historical illustrations continues to be obligatory.

"Expired" cannot mean, in Confessional context, that modern Christians are free from obligation to the judicial laws. This is unmistakably clear from chapter 20, section 1, where the Westminster Confession teaches how the "liberty" of New Testament believers is "enlarged" over believers under the Old Testament law. It specifies "freedom from the yoke of the ceremonial law, to which the Jewish Church was subjected" -- but says absolutely nothing about freedom from the judicial laws. Their equity was taken to be perpetually binding.

What did section 19.4 mean for the Puritans in historical context? Nearly all students recognize that the leading theologian and most persuasive authority at the Westminster Assembly was the Scottish commissioner, George Gillespie. In 1644, while at the Assembly, he published in London a tract entitled "Wholesome Severity Reconciled with Christian Liberty" (reprinted in Anthology of Presbyterian and Reformed Literature, vol. 4, ed. C. Coldwell, Dallas: Naphtali Press, 1991, pp. 178ff.). The preeminent Westminster divine could hardly have been clearer or more to the point.

Gillespie disputes with a hypothetical critic who might have scruples against using the Mosaic judicial laws. Asking "whether the Christian Magistrate is bound to observe the judicial laws of Moses, as well as the Jewish Magistrate was," Gillespie declared that "he is obliged to those things in the judicial law which are unchangeable, and common to all nations; but not to those things which are mutable, or proper to the Jewish Republic" (such as Jubilee year remission of debt, the levirite institution, etc.) -- thus drawing the exact distinction between cultural form or peculiarity and the underlying equity of the judicial laws which we have noted above.

Gillespie set forth reasons which he said "prove" that "the Christian Magistrate is bound to observe these judicial laws of Moses which appoint the punishments of sins against the moral law." The perpetual requirement of the judicial law thus included for Gillespie the penal sanctions of the Mosaic civil code.

In good "theonomic" style, Gillespie argued that if this were not true, civil punishments would become "arbitrary" -- which is contrary to the magistrate being required to function as a "minister of God." The modern magistrate cannot improve upon the justice and wisdom of God's law according to Gillespie. Since everything is to be done to the glory of God (1 Cor. 10:31), "how shall Christian Magistrates glorify God more than by observing God's own laws, as most just, and such as they cannot make better?"

He further proved his point from Matthew 5:17, noting that Christ's words there "are comprehensive of the judicial law." One must presume the continuing validity of any Old Testament law unless there is Biblical warrant for setting it aside or altering its observance. Gillespie's argument is thoroughly theonomic: "He who will hold that the Christian Magistrate is not bound to inflict such punishments for such sins is bound to prove that those former laws of God are abolished, and to show some Scripture for it."

Gillespie wrote that "the same reason of immutability" was found in the Mosaic punishments "which is in the offenses." If adultery is still taken as an offense today, then the penalty assigned to it in the law should also be normative today.

Continuing his theonomic line of argument, Gillespie observed that "the judicial law was not typical," and thus cannot be lumped in with the ceremonial law. "Though we have clear and full scriptures in the New Testament for abolishing the ceremonial law, 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."

There can be no question, then, that the leading and most influential theologian at the Westminster Assembly maintained that the "general equity" of the Mosaic judicial laws continued to require

civil officials in the New Testament era to enforce the penal sanctions of that law. According to George Gillespie, "the will of God concerning civil justice and punishments is no where so fully and clearly revealed as in the judicial law of Moses. This therefore must be the surest prop and stay to the conscience of the Christian Magistrate."

Gillespie openly stated that he had no hesitation in holding "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." He saw the modern state as regulated in its civil code by the penal provisions of the law of Moses.

Sinclair Ferguson grants the weighty "hermeneutical benefit" of looking at the views of the Scottish commissioners Gillespie and Rutherford in interpreting the Westminster Confession at section 19.4 (loc. cit., p. 340). He even adds that Rutherford argued, in a 1649 tract, "that whatever rulers were commanded to do in the Old Testament, all rulers are obliged to do." (Unfortunately Ferguson then fallaciously proceeds to portray Rutherford's subordinate disagreement with Gillespie about the manner or severity of certain of the civil penalties as an anti-theonomic dispute, rather than as an intramural debate among theonomists about what the Biblical evidence specifically requires.)

Conclusion

Those who advocate the justice, wisdom and continuing authority of the Mosaic civil laws for our degenerating society today have special reason to rejoice in the 350th anniversary of the Westminster Assembly. May the Biblical faithfulness, theological consistency, and social relevance of our Puritan forefathers be a confidence-inspiring example to us all. May their voice be heard again in our generation.