

Samuel Rutherford on the Judicial Laws of Moses:

Excerpts Arranged Topically

Edited by

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Samuel Rutherford on the Judicial Laws of Moses

1. Giving the Judicial Law to Israel was an Act of Love

Divine Right of Church Government (1646) p. 33

And it is an act of singular love that God gave his judgements, Word, and statutes, even of ceremonies and policy to Israel and Jacob, and did not so to every nation (Ps. 149:19-20; Eze. 20:11-13). This was Israel's excellency above all nations on earth (Dt. 4:6; Dt. 20:33; Rom. 3:1-2; Rom. 9:4), that God gave them particular laws, judgments, statutes, not only in morals, but also in ceremonials and policy...

2. The Judicials were given for a Time and Occasionally; the Superiority of the Moral Law¹

Divine Right of Church Government (1646) p. 37

2. Nor can we say that laws made upon occasion, as that law of transferring the inheritance to the daughter, made upon occasion of the daughters of Zelophehad, are in this sense occasional, that the Jews might at their pleasure alter, or change a Law made by God, and substitute one of their own in place thereof; for then might the Jews change all the ceremonies and judgments that God gave them for a time and occasionally: Now then they might have abolished circumcision, the Passover and substitute other Sacraments in their place, for:

[1] these Sacraments were not given by God's own voice [as only the Moral Law was: Ex. 20:1,19,22; 21:].

2. Nor written by Gods own finger [as only the Moral Law was: Ex. 31:18].

¹ [For an excellent demonstration of the superiority of the Moral Law over the Judicial and Ceremonial Laws, see the Scottish covenanter that Rutherford often quotes (and uses the same arguments as): John Weemes, 'Of the Excellence of the Moral Law above Other Laws', (8 pp.) being ch. 1 of *An Exposition of the Moral Law* (1636). See also the same arguments in Francis Roberts, 'On the Moral and Judicial Law' (24 pp.) from *God's Covenants with Man* (1675).]

3. **Nor are they termed a Covenant, in that sense that the Moral Law is termed a Covenant [Ex. 34:28].**

4. **Nor are they given without limiting of time and place, expressly when and where [as only was the Moral Law].**

Now if the Church of the Jews could change Sacraments at their pleasure, because their Sacraments **were no part of the eternal Law Moral**, they might alter all God's Law, as the Church may alter surplice, crossing; and I see not, but the Church of the New Testament upon the same ground may alter the Sacraments of the New Testament...

3. The Judicial Laws were Appointed by the Positive,² not Moral, Will of God

Divine Right of Church Government (1646) p. 383

[If Erastus' argument were true:] Then the Christian Church should be conform[ed] yet to the Jewish, we should have those same bloody sacrifices, **judicial laws**, ceremonies that they had. **The judicatures and officers are positive things, flowing from the positive will of God who does appoint one jurisdiction for them, most wise, and another to Christians different from them, and in its kind, most wise.**

4. The Positive Aspects of the Judicials were Morally Binding to the Jews, but are not to us

Divine Right of Church Government (1646) p. 34

3... But the comparison must go upon this supposition: that **the Lord purposed to make politic laws in their positives, moral and obligatory of the conscience**

² [Positive Laws are laws that do not reflect something inherently moral, but are ordained of God by his free sovereignty for a particular purpose, often limited to times and occasions, not being universally binding upon all persons in all times and places. Examples of such are God's telling Abraham to leave his home country (Gen. 12), to sacrifice his son (Gen. 22), and the typical ceremonial laws in the Old Testament, amongst many others.]

of the Jews, and the civil laws of the gentiles under the New Testament in their positives (such as is not to carry armor in the night and the like)³ not to be moral nor obligatory of the conscience. But as touching that which is moral in all civil laws, the Lord is as careful of our temporal state as of theirs in condescending to particularize all morals to us as well as to them.

5. God has not Prescribed the Judicials to the Christian State

The Due Right of Presbyteries (1644) p. 70

...the Church and State in Israel were two incorporations formally distinguished. And I see not, but those who do confound them [the Erastians], may also say that the Christian State and the Christian Church be all one State, and that the government of the one must be the government of the other; which were a confusion of the two kingdoms. It is true, **God has not prescribed judicials to the Christian State, as He did to the Jewish State, because shadows⁴ are now gone when the body Christ is come; but God's determination of what is morally lawful in civil laws is as particular to us as to them;** and the Jewish judicials did no more make the Jewish State the Jewish Church, than it made Aaron to be Moses and the priest to be the king and civil judge...

³ [Rutherford may be referring to heathen custom at the time of Christ, or to Rom. 13:12, or to both.]

⁴ [Rutherford held that many of the penalties of the judicials were typological of a spiritual teaching (see Sections 8 & 14 below). As Gal. 4:1-3 speaks of the temporary and transient nature of the Ceremonial Law (per Rutherford, Section 12), these aspects of the judicials have been done away with the Ceremonial Law.]

6. The Bulk of the Judicial Law, as Judicial, is Abolished,⁵ though the Moral Equity Remains

Divine Right of Church Government (1646) p. 494

But we conceive [that] **the whole bulk of the Judicial Law, as judicial and as it concerned the republic of the Jews only, is abolished, though the moral equity of all those be not abolished;**

7. The Judicial Law does not need to be said to be Abolished in the New Testament⁶

Divine Right of Church Government (1646) pp. 493-494

“But we read not” (says Erastus) “where Christ has changed those laws in the New Testament.” It is true, **Christ** has not said in particular: “I abolish the debarring of the leper seven days, and he that is thus and thus unclean shall be separated till the evening;” **nor has He said particularly of every carnal ordinance and judicial law: “it is abolished.”** But we conceive the whole bulk of the Judicial Law, as judicial, and as it concerned the republic of the Jews only, is abolished, though the moral equity of all those be not abolished...

⁵ [Westminster Confession of Faith, 19.4: “To them also, as a body politick, he 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.”]

⁶ [The reason the Judicial Laws do not need to be said to be abolished in the New Testament is because it is not to be presumed that everything in the Old Testament continues obligingly into the New Testament unless it is explicitly stated otherwise. Only the *natural and moral* aspects of the Old Testament continue obligingly into the New Testament, not because they are in the Old Testament, but because they are natural and moral, and hence of universal obligation to man by his created nature. Hence Rutherford is glad to take the burden of proof upon himself to show what in the Judicial Laws is perpetually moral (see Section 9 & 15). See George Gillespie enumerate such a list of natural and moral things in the Old Testament that carry over into the New (including many of the same death penalties that Rutherford holds as perpetually obligatory in Section 15) in *Miscellaneous Questions*, Ch. 13, Section 2, pp. 68-69 in *The Presbyterian's Armoury*, vol. 2.]

The Judicial Laws were never intended to be perpetually binding, even when they were first given, as: (1) they were never on the same par as the Moral Law (see Section 3), and (2) the Old Testament itself implied that the judicials were of a local and temporary nature, as they would not, and could not, be binding in exhaustive detail when the gentile nations should come into the Kingdom of God, as gentiles, remaining gentiles, staying in gentile lands (Ps. 67, 72:11; 98; Isa. 19:18 ff.; 66:18-21, etc.)]

That this [these punishments of particular case laws] should be perpetual because Christ in particular has not abolished it, to me seems most unjust; for as Paul says, "He that is circumcised becomes debtor to the whole law," [is] sure to all the ceremonies of Moses' Law; so I argue, *a pari*, 'from the like': He that will keep one judicial law, because judicial and given by Moses, becomes debtor to keep the whole Judicial Law under pain of God's eternal wrath.

8. The Manner of Punishment in the Judicials was Largely Positive Law⁷

Divine Right of Church Government (1646) p. 494

...also **some punishments were merely symbolic**,⁸ to teach the detestation of such a vice, as the boring with an aul the ear of him that loved his master, and desired still to serve him, and the making of him his perpetual servant. I should think the punishing with death the man that gathered sticks on the Sabbath was such.⁹

And in all these, the punishing of a sin against the Moral Law by the magistrate is moral and perpetual; but the punishing of every sin against the Moral Law *tali modo* [in such a manner], so and so, with death, with spitting on the face: I much doubt if these punishments in particular, and in their positive determination to the people of the Jews, be moral and perpetual, as: he that would marry a captive woman of another religion, is to cause her first to pare her nails and wash herself, and give her a month, or less time, to mourn the death of her parents, which was a judicial, not a ceremonial law.

That this should be perpetual because Christ in particular has not abolished it, to me seems most unjust; for as Paul says, "He that is circumcised becomes debtor to the whole law," [is] sure to all the ceremonies of Moses' Law; so I argue, *a pari*, 'from the like': He that will keep one judicial law, because judicial and

⁷ [Positive Laws are laws that do not reflect something inherently moral, but are ordained of God by his free sovereignty for a particular purpose, often limited to times and occasions, not being universally binding upon all persons in all times and places. Examples of such are God's telling Abraham to leave his home country (Gen. 12), to sacrifice his son (Gen. 22), and the typical ceremonial laws in the Old Testament, amongst many others.]

⁸ [Rutherford held that many of the penalties of the judicials were typological of a spiritual teaching (see Sections 5 & 14). As Gal. 4:1-3 speaks of the temporary and transient nature of the Ceremonial Law (per Rutherford, Section 12), these aspects of the judicials have been done away with the Ceremonial Law.]

⁹ [See footnote on p. 28]

given by Moses, becomes debtor to keep the whole Judicial Law under pain of God's eternal wrath.

9. Judicial Laws Apply Only by Moral and Natural Equity – A Seducing Teacher

Free Disputation Against Pretended Liberty of Conscience (1649) ch. 25, 'Whether the Rulers, by their Office, in Order to Peace, are to Stand to the Laws of Moses for Punishing Seducing Teachers?' p. 308 ff.

But for the point in hand **the Christian Magistrate is tied and obliged to these punishments to be inflicted for moral offences** [specifically against notorious, public and unyielding heretical teachers] **that the Law of God has ordained, at least, in nature,**¹⁰ I prove:

1. **That which is moral** and cannot be determined by the wisdom and will of man must be determined by the revealed will of God in his Word; but **the punishment of a seducing prophet** that ruins the soul of our brother and makes him twofold more the child of Satan than before **is moral and cannot be determined by the wisdom and will of man; Therefore such a punishing of a seducing prophet must be by the revealed will of God in his Word.**

The proposition is proved:

¹⁰ [Natural Law is defined as standard fare in the thought of the Reformation and Puritan eras by Dr. Richard Muller, as: "The universal moral law either impressed by God upon the mind of all people or immediately discerned by the reason in its encounter with the order of nature. The natural law was therefore available even to those pagans who did not have the advantage of the Sinaitic revelation and the *lex Mosaica* [Law of Moses], with the result that they were left without excuse in their sins, convicted by *conscientia* [conscience]. The scholastics argue the identity of the *lex naturalis* [Natural Law] with the *lex Mosaica* or *lex moralis* [Moral Law] *quod substantiam*, according to substance, and distinguish them *quod formam*, according to form. The *lex naturalis* is inward, written on the heart and therefore obscure, whereas the *lex Mosaica* is revealed externally and written on tablets and thus of greater clarity." (*Dictionary of Greek and Latin Theological Terms*, pp. 174-5)

In more plain English, Dr. Muller says: "In substance, the *lex moralis* is identical with the *lex naturalis*, but, unlike the natural law, it is given by revelation in a form which is clearer and fuller than that otherwise known to the reason." (*Dictionary*, pp. 173-4)

For an excellent introduction to Natural Law as held to by the reformers and puritans, see Stephen Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (2006) [Buy](#)]

1. Because **God only**, not Moses nor any other lawgiver under him, **takes on Him to determine death to be the adulterer's punishment** (Lev. 20:10). And the same He determines to be the punishment of **willful murder** (Ex. 21:12), of **smiting of the father or mother**, (v. 15), of **man-stealing** (v. 16), of **sorcery** (Ex. 22:18), of **bestiality** (22:19), of **sacrificing to a strange God** (22:10). **And upon the same reason, God only, not any mortal man, must determine the punishment due to such as seduce souls to eternal perdition.** For what reason can be imagined why God can be the only determiner of such a punishment of killing,¹¹ and not for the ruining the soul and making him the child of perdition?

...

2. The proposition is proved because **the will of God** can be **the Creator and First Author of** nothing but [that] **which is morally good**. For the Scripture is as full in the duties of the Second Table touching mercy and righteousness as in the duties of the First, touching piety and religion; and **anything pretended to be moral has God for its author in either the First or the Second Table of the Law**. Nor can the will of man be the author of anything morally good; and will-righteousness is as unlawful as will-worship or will-piety since the Word is a perfect rule in matters of doctrine or faith, or of life, manners and conversation, and teaches the judge what he should do (Dt. 17-20; Ps. 19:8-9; 119:9; Prov. 3:21-23, etc)...

3. Whatever **by order of justice** does concern the life and death of our neighbor, rewarding or punishing him in name, body, goods, so as **if it be justly inflicted, it is justice**; and if unduly and undeservedly, it is injustice and murder, as: wronging of him in his body by stripes, wounding, death; in his liberty by prison; in his goods by fines; **that must be determined in the Word by Him that is Lord of life, death, liberty, of our name and goods, otherwise the Word should not teach us when the judge sins**, when not, when he makes just laws, when unjust, when he exceeds in punishing, when he is deficient.

¹¹ [Rutherford argues that the death penalty is by way of a Positive Law of God in *Lex Rex, Question 13*, pp. 50-51.]

I come to the assumption [of the syllogism]: **The punishing of a seducing prophet is moral:** in that it is commanded to father and mother, not to pity him (Dt. 13:6), [is] held forth as the zeal of God in father and mother under the Messiah's Kingdom (Zech. 13:1-6), and every one is forbidden, "to bid him God speed," yea, and commanded to deny him an act of humanity, and hospitality, and not receive him in his house (2 John 1). If we be commanded to put any shame on him, far more must the ruler be taught of God what shame he should put on him. **For whatever under the New Testament is capable of a command, is moral. And if moral, what the Magistrate should do to him can no more be determined by the will and wit of man, than it can be determined what punishment the magistrate must inflict upon the murderer, the adulterer, the sorcerer, the sodomite; which all the wisdom of God has determined in the Word, otherwise God has left the magistrate in the dark,** that from the word he has no direction, when he commits murder or when he does acts of justice.

And **that it is a moral act also to seduce souls is clear,** in that:

1. We are commanded "to beware of such," (Mt. 7:5) and "avoid them," (Tit. 3:10; Rom. 16:17).
2. That the Lord condemns them in his Word, as such as make their followers the "children of perdition," (Mt. 22:15) yea, "they subvert the hearers: their word eats as a canker, (2 Tim. 2:15,17), "lead silly women captive," (2 Tim. 3) are "deceivers," (Tit. 1:10).

Now that God has appointed a punishment for this of old, and has spoken against this sin so much in the New Testament, and bidden private Christians, cry shame on seducers, and fly them, and yet left the Magistrate under a discharge, and inhibition to draw a sword against such: who can believe it, except that inhibition given to the Christian Magistrate were written in the Testament of our Lord? [which it's not]

To say the New Testament dispensation is so spiritual that God will have no remedying of seducing but by the spiritual armor of the Word, is said

without ground, when the New Testament dispensation is as spiritual to gain the sorcerer, the thief, the sodomite, the drunkard, the reviler, as the idolater by the spiritual armor of the Word (Acts 19:19; 1 Cor. 6:9-11), and by this reason the magistrate may draw the sword against none of these: sodomite, drunkard, sorcerer; contrary to Rom. 13:1-6; 1 Pet. 2:14, especially since the magistrate is not indifferent towards ill-doers and well-doers; since he must punish the one as a nurse-father, praise and reward the other (1 Peter 2:14). Gaining of souls is well doing (Mt. 25:21,23) **and seducing of souls is by the law of nature¹² and nations¹³ the worst of injuries done to men.**

2nd Argument: That which is perpetually moral, and one act of justice at all times and places, must oblige us Christians and the Christian Magistrate as well as the Jewish Rulers. But to punish the seducing prophet is perpetually moral and an act of justice at all times and in all places, as the rewarding of such as teach truth is a commendable act of justice.

Therefore the proposition is clear in regard [that] **the Moral Law does therefore oblige us Christians because it is morally perpetual and perpetually moral; and that in all times and places as to serve God, honor our parents, not to murder etc... is perpetually moral now, as among Jews [so] with us, as among the Indians and Tartarians.**

But to punish the seducing prophet is such:

1. Because the heretic is condemned by his own conscience (Tit. 3:10) in believing lies; therefore, far more by his own conscience by leading others into that same condemnation with himself. And if he apprehend the vengeance of a Godhead, there must be a conscience naturally apprehending such as we see the conscience of murderers and of Cain

¹² [For a definition of Natural Law, see the footnote on p. 8]

¹³ [The 'Law of Nations' (*lex gentium*) is technically distinct from Natural Law, though flowing therefrom. The basic instincts of Natural Law found, support and flow into the more specific, positive enactments of government, which have been common to, in some way, shape, or form, nearly all nations historically.]

fear some revenging hand. **If therefore the minister of God, the magistrate, inflict this, it must be nothing else but an act of natural justice which the natural conscience doth apprehend. But what acts of justice the conscience naturally fears must be acts of justice perpetually moral, not respecting one man or nation more than another.**

2. All countries by an instinct apprehend a God and conceive [that] their priests and prophets are to be entertained and rewarded, as:

Egypt (Gen. 47:22), Midian, (Ex. 2:16; Ex. 18:1; Jud. 17:5; 18:4; 2 Kin. 15:18). The Philistines (1 Sam. 5:5; 6:2). Baal and the Zidonians had their priests (2 Kin. 10:8,19), Lycaonia (Acts 14:13).

And if their rulers feed their priests, the false prophets and priests that deceive them and mislead them, they must punish. So the king of Babylon roasted in a fire two false prophets (Jer. 29:21-22). **And it is clear that Jeremiah argues not from any judicial law when he says, "The Prophets that speak lies in the name of the Lord, shall die by the sword," (14:14-15).** It was by the sword of the Chaldeans, (**who had nothing but the Law of nature**) that they perished; **for no Judicial Law of God taught them** that he ought to die by the sword of the magistrate who speaks lies in the name of the Lord. Whereas the Chaldeans, knowing that Jeremiah had prophesied truth and was sent of God, they entreated him well, as the Lord had foretold (Jer. 15:8).

Nor can it be said that the consequence is null and that that cannot oblige Christian magistrates which has no better warrant than the corrupt practices of heathens [the Law of nations], for they persecuted the true prophets and apostles that spake in the name of the Lord, as Herod beheaded James (Acts 12) and apprehended Peter. Nero persecuted Paul and Domitian confined John to the Isle Patmos for the Word of God.

To which I answer that:

The argument is not drawn simply from the practice of heathen magistrates, but from the light of nature¹⁴ that teaches all magistrates, heathen and Christian, to punish public impostors, false prophets and liars as most pernicious enemies to the peace of all human societies. And if the law of nature and nations dictate to all societies that deceivers and such as raise false reports and lies upon earthly judges **should be punished**; far more is it a principle of the Law of nature, that public liars, and such as speak lies in the name of the Lord, and deceive and seduce the souls of father and mother, king and ruler, and of all ranks of men in the society, **should not be tolerated in the society.**

And what **though emperors and kings have abused the power that God gave them** for the truth to persecute the servants of Christ for the truth? **It [their conclusion] follows not, but they had just power as the ministers of God to punish seducing prophets** as well as other ill-doers **by the Law of nature and nations.**

And this I take is held forth by Job (31:26-28),¹⁵ who **being under no Judicial Law obliging the Jews, but a Gentile, and so in this led by the Law of nature and nations, makes idolatry** and worshipping of the sun and moon, **to be an iniquity to be punished by the judge.**

That this is not an iniquity to be punished by God [alone, as if the heretical teacher gets off scot-free in this life] (as if heresy be innocency, as Libertines say, it must neither be punished by God nor man) but by the judge on earth is clear. For:

1.... **All agree to this, that idolatry, according to Job, from the Law of nature, deserves capital punishment to be inflicted by the judge...** but to prove that forcing of men to religion is not to the way of God, which also I teach, for:

¹⁴ [See footnote on p. 8 for a definition of Natural Law.]

¹⁵ ["If I beheld the sun when it shined [in its glory], or the moon walking in brightness; and my heart hath been secretly enticed, or my mouth hath kissed my hand [an act of religious adoration]: This also were an iniquity to be punished by the judge: for I should have denied the God that is above."]

1. The preaching of the Word, not the using of the sword, is the means of conversion of sinners.
2. That killing is not to be practiced on all heretics [only those who obstinately and publicly evangelize heretical teachings, refusing submission to repeated warnings, corrections, etc.].
3. That the Law and the sword are not to go without convincing of the conscience by the Word of God.
4. That to deliver up godly men to persecuting Tyrants, because of some errors has more scandal to cause men to stumble at truth than to make truth victorious.
5. That neither Church nor State can judge heart-opinions, nor punish them, but only professed and taught opinions that are both unnecessary and unsound.
6. That pastors have not the sword to compel to religion.
7. That nations of another religion are not gained to Christ by the sword; nor can we make war against them because they are idolaters, and follow a false religion; nor was idolatry the ground of the war that Israel raised against the Canaanites and other nations.

...

3rd Argument: That which was a mere judicial law and not only in no force now as touching any obligation to bodily punishment from the Christian Magistrate, is now under the Gospel, either:

1. A sin offensive to human society [Rutherford's answer], or,
2. No sin, but innocency, as some say, or then
3. A thing indifferent.

1. **If it be a sin offensive to human society and the people of God “to drive them away from the Lord their God,”** and an abomination that Israel should fear to do in the days of Moses and before Christ came, as is clear (Deut. 13:3-11), it must be so now: for since **it is not a typical [typological], but a moral sin, it is at all times, and in all places to us and now, and to them and then, an abomination.** Therefore **the argument of the Holy Ghost being perpetual, that it is destructive to human society,**¹⁶ the Lord must provide the same, or as effectual means, for the remedying thereof.

...

2. Now, if to teach (I say) what we conceive to be truth, though [it is] most false, be no sin, but innocency, then the magistrate ought not only not to punish it, but seducers, [ought] to teach what errors they judge saving truths....

...

3. The third cannot be said, to wit, that it is indifferent to drive away people from the true God [Dt. 13:3-11]; for it must either be good and praise worthy, or evil, and so punishable, against which we have sufficiently argued.

10. The Magistrate is Obligated by the Moral Law, not the Judicial Law

Free Disputation (1649) ch. 25, ‘Whether the Rulers, by their Office, in Order to Peace, are to Stand to the Laws of Moses for Punishing Seducing Teachers?’ p. 321 ff.

Argument 4: What the Magistrate is fore-prophesied to be under the New Testament, that he must discharge with all the power God has given him, and

¹⁶ [Rutherford is saying that the Holy Ghost’s argument and reason for the law in Scripture is that it is destructive to human society. Another way to put it is: Scripture, in many of these judicial laws is simply descriptively enforcing natural law. The author of Scripture is the same as the author of nature.]

that perpetually, and not by the tie of a judicial and temporary law which binds for a time only.

But the Magistrate is fore- prophesied (Isa. 49:23; 60:10; Rev. 21:26) to be a nurse-father to the Church under the New Testament, **to keep and guard both Tables of the Law [the Moral Ten Commandments],**¹⁷ and to see that pastors do their duty, to minister to the Church by his royal power, yea when the fountain shall be opened in David's house (that is under the New Testament), he shall thrust through the false prophet that speaks lies in the name of the Lord (Zech. 13:1-6).

Kings as kings must confer some royal service to the Church over which they are nurse-fathers. But all the power that kings have is essentially co-active [by force] and in order to rewarding or punishing (Rom. 13:3-4). Therefore they must confer co-active service. Piscator says well that **"the prince is called the keeper of both Tables of the Law by our divines," therefore he is to vindicate God's glory in both.**

He that has the keeping of two pits, one more horrible and dark, another more mild and heartsome, for two malefactors, a thief and an adulterer, he must not cast the thief in such a dark dungeon as the adulterer. So if the magistrate keep both Tables, he must not punish according to his own will, but according to the rule and prescript of God [which is known by nature and evidenced in the judicial laws in Scripture].

11. Kings Follow Old Testament Example by Natural Equity of Office

Free Disputation (1649) ch. 13, 'Magistracy and Perpetual Laws in the Old Testament Warrant the Civil Coercing of False Prophets', p. 179 ff.

What the patriarchs and godly princes of Israel and Judah were obliged to do as rulers and princes, and not as such rulers who were privileged types of Christ,

¹⁷ [For the best brief defense that the magistrate is to keep both Tables of God's Ten Commandments (and not just the second), see the New England puritan document by the Cambridge Synod, [The Power of the Civil Magistrate in Matters of the First Table](#) (1646, 14 pp.).]

that, all kings and rulers under the New Testament are obliged to do. For *quod convenit h auto convenit kata pantos* [that which agrees in the thing itself, agrees to all of that kind], what agrees to kings as such, and to rulers as such, agrees to all kings and to all rulers.

But patriarchs and godly princes, as rulers commanded the putting away of strange gods, as Jacob (Gen. 35:2-4) did, and the worship of the true God: as Abraham (Gen. 18), he being a prince within himself. So repenting Manasseh (2 Chron. 33:15-16) removed strange gods and new alters. Asa removed idolatry and queen-mother for her idolatry (2 Chron. 14), renewed the Covenant, and “commanded that whosoever should not seek the Lord God of Israel, should be put to death whether small or great, whether man or woman.” Jehosaphat is commended because he took away the high places [of idolatry] and the groves, as other godly kings are blemished for not removing of them (2 Chron. 19:4). “Nevertheless there are good things found in thee,” says the prophet Jehu. Hezekiah removed the high places, the images, groves, brazen serpent, restored the Passover, worship, priests, and Josiah destroyed the high places, groves, carved, and molten images, idols, and altars of Baal, the horses dedicated to the sun, houses of the Sodomites, Topheth, Baal’s priests (2 Chron. 34).

Now that they did this as princes, not as privileged types of Christ [as some argued for, who would annul these examples], and that God requires this at the hands of King Charles [then currently in power], when God shall establish him in his throne, to take order with [all the heretical sects of the day:] Arians, Socinians, Anti-trinitarians, Familists, Antinomians, Anabaptists, Seekers, etc., is evident...

...

2. That **they did this as princes of common equity by the law of nature**, I prove:

1. Darius who was undeniably no type of Christ to his great commendation makes a law (Ezra. 6:11):

“I have made a decree that whosoever shall alter this word, let timber be pulled from his house, and being set up, let him be hanged thereon, and let his house be made a dunghill for this;”

And this is commended by the Holy Ghost (v. 14):

“They prospered through the prophesying of Haggai, etc... according to the commandment of the God of Israel, and according to the commandment of Cyrus and Darius, and Artaxerxes King of Persia.”

And Ezra ch. 7, Artaxerxes says (v. 26):

“Whosoever will not do the law of thy God, and the law of the king (enjoining obedience thereunto) let judgment be executed speedily upon him, whether it be unto death, or unto banishment, or to confiscation of goods, or to imprisonment.”

And Artaxerxes was no type of Christ, yet Ezra adds in the next verse, 27,

“Blessed be the Lord God of our Fathers, which hath put such a thing as this in the heart of the King, to beautify the house of the Lord at Jerusalem.”

If it stand good that patrons of liberty [of toleration] say, he was not to bless God for this; he had cause to mourn, that the heathen king being no type of Christ should intermeddle with that which belonged not to him, to strain the tender consciences of men and to force religion upon them with the sword; for 10:7-8, this is set down as a blessed decree which brought on an assembly, for “putting away strange wives”: The like is clear in the decree of Darius (Dan. 6) for “worshipping the God of Daniel,” and of the king of Nineveh, for a general fast (Jon. 3) and Nebuchadnezzar (Dan. 3:28-29).

12. Pedagogy in Gal. 4:1-3¹⁸ is Ceremonial¹⁹

Free Disputation (1649) Ch. 14, 'Cavils Against Coercive Judicial Laws for Punishing False Prophets in the Old Testament Removed'

The first common answer made to all these is that these were judicial and Old Testament laws when God dealt more strictly with the Jews, and hedged them in with severer laws, penalties and a greater measure of bondage than now under the meek and gentle reign of the Messiah.

Answer:

1. **More severity, and a stricter tutory to be over the Church in non-age, and under pedagogy, we grant (Gal. 4:1-3). But that is in regard of Ceremonial hedges, laws and days.**

13. Old Testament Case Law Punishments are now Variable²⁰

Free Disputation (1649) ch. 14, p. 190 ff.

2... Nor can the Libertines show us of a Ceremonial death inflicted for the transgression of a moral law, which transgression is now made free from all bodily punishment [they say]. **Indeed the man that refused to raise up feed to his brother was put to shame by the law, and we are freed from both the law**

¹⁸ [Gal. 4:1-3, "Now I say, That the heir, as long as he is a child, differeth nothing from a servant, though he be lord of all; But is under tutors and governors until the time appointed of the father. Even so we, when we were children, were in bondage under the elements of the world:"

¹⁹ [The objectors would have nearly all of the judgments involving the death penalty done away with. Rutherford holds that many of them, being moral for moral sins, still apply (see Section 15.4) in the same severity as ever; hence the counter-response that Gal. 4:1-3 speaks only of Ceremonial Laws. Yet Rutherford held that many of the penalties and other aspects of many of the judicial laws were symbolic shadows (see sections 8 & 14 amongst others) which have been done away with Christ, the body, coming. This would classify those aspects of the judicials as ceremonial. In light of such, while Rutherford denies that the Judicials as a category were severer than what is the norm for today (as his opponents argued), yet he implicitly admits elsewhere that aspects of certain of the Judicials were severer in Moses than after Christ, the body, has come. Hence, Rutherford does not see the Judicial Law in exhaustive detail as being the standard of severity that we should aim at today in civil law. Rutherford's relaxing of certain penalties is evident in numerous places in this document.]

²⁰ [Note that the perpetually binding nature of the penalties of the Judicial Laws is a distinctive of Theonomy.]

and the penalty thereof, and the man that gathered sticks on the Sabbath was put to death by an answer from God's mouth, but the breach of the holy Sabbath instituted before the fall is no Ceremonial transgression.

Nor do we think that every violation of the Sabbath was punished by death, but that the magistrate, masters and fathers are not to punish with bodily coercive power the transgressors of the fourth command is most false. For what the magistrate commands the subject, the master the servant, the father, the sons and **they which have warrant from the Moral law to command in these relations,** that they command in order to the sword and rod if their commandments find no other welcome but rebellion, for the power of magistrate and master, yea, and of the father now in the state of sin is essentially coercive: they may compel their inferiors by strong hand either to do or suffer the will of God, which is sufficient to prove our point.

Though it be true [that] **some moral transgressions Moses punished with death (as Sabbath-breaking), it follows not therefore [that] the godly prince may now punish it with death; but it follows not therefore [that] such transgressors are made free through Christ of all bodily punishment,** as Libertines infer, for though the temporariness of the punishment be only in the measure of punishment, yet not in the punishment itself.

Free Disputation (1649) ch. 25, 'Whether the Rulers, by their Office, in Order to Peace, are to Stand to the Laws of Moses for Punishing Seducing Teachers?' p. 298 ff.

Judicial Laws may be judicial and Mosaic, and so not obligatory to us, according to the degree and quality of punishment:

[1.] **Such as is Dt. 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 perpetual obligation,** because the magistrate bears the sword to take vengeance on ill doers and so on these that are partakers of his ill deeds [by harboring him] who brings another Gospel (2 Jn. 5:10).

2. Though Saul's destroying of the Amalekites in that cause was moral, in regard [that] "*they lay in wait for Israel, when they came out of Egypt,*" and so of perpetual obligation, yet the destroying of them (1 Sam. 15) is temporary, and obliges not us;

1. Because that generation were their sons [and] not those same persons that oppressed Israel when they came out of Egypt, **and we may not punish the sons for the sins of their fathers with death; therefore God's positive command to Saul, and the reason, "I remember what Amalek did" (in Moses's time) "therefore kill them," does not oblige us, except we had the like command.**

2. Because the slaying of man, woman, infant, and suckling, ox and sheep, was temporary and cannot have a perpetually obligatory ground in the Law of nature or natural justice obliging us.

3. **Where there is an injury done to God against the Law of nature, and against our brethren in drawing them from serving the true God, and a punishment commanded by God to be inflicted once, that punishment or the like in substance and nature, must ever be such as obliges us in the like cases.**

The learned professors in Leiden say: "They can see no reason but they must oblige under the New Testament." **I confess when the fault is ceremonial, though the punishment be real, as the cutting off of an infant not circumcised and some punishments inflicted on the leper, it is not reason [that] the law should oblige us in the New Testament, either as touching the punishment or the degree, because these punishments for typical [being typological] faults are ordained to teach rather than to be punishments, and the magistrate by no light of nature could make laws against unbaptized infants.**

4. No man but sees [that] **the punishment of theft is of common moral equity, and obliges all nations, but the manner or degree of punishment is more positive: as to punish theft by restoring four oxen for the stealing of one ox, does not to oblige all nations, but some other**

bodily punishment, as whipping, may be used against thieves. Mr. John Weemes, vol. 3, ch. 38, *Of the Judicial Law*:

“The determination in Moses’ Law Judicial, was *divini juris*, ‘divine law’, and they had greater force to bind the sons than any municipal laws have to bind subjects now, in regard they were given by God Himself; yet these judicial laws commanded the outward man, whereas the Moral Law, called <Hebrew> *ignea lex* ‘the fiery law’, Dt. 33, this fiery law pierces the heart.”

Gamacheus²¹ says [that] **judicials and ceremonials are immediately deduced out of the principles of the Law of Nature, “by way of a more remote and obscure conclusion;”** Aquinas says, “by way of divine determination.” **But the truth is, the proposition might have some ground in the Law of Nature, but why thirty-nine stripes, not forty, not thirty-eight only should be inflicted on such an evil doer? And the assumption in many judicial laws seems to be an act of the mere positive will of God, therefore Aquinas says, “Ceremonials *primo and per se*, ‘first and chiefly’ were ordained to signify things, but Judicials *secundario* [secondarily] did signify things, to come.”** And Swarez says, “That **Judicials necessarily, and by accident, did signify things.**”

[Rutherford here contrasts the two polar extremes of the obligation of the Judicial Law question. Rutherford takes the middle view of moral, general equity.] It is true, Corinthus (as Epephanus and Jerome say) and the Ebionites (as Ireneus says), and the Nazarer (as Augustine tells us) [Corinthus, the Ebionites and the ‘Nazarenes’ were erroneous sect of the Early Church], hold that Ceremonials and Judicials do yet oblige [in full]. Schoolmen [Medieval Roman Catholics] deny their obligation [the obligation of the Judicial Laws] as Soto, Aquinas, Medina, Valentia, Gamacheus, because the priesthood is changed.

²¹ [Gamaches, Philippe d. (†1625), a Roman Catholic]

14. Not all the Capital Crimes in the Judicials must be Capital Crimes Now

Divine Right of Church Government (1646) pp. 493-494

But sure Erastus²² errs who will have all such to be killed by the magistrate under the New Testament because they were killed by him in the Old: Why, but then the whole judicial law of God shall oblige us Christians as Carolostadius²³ and others teach?

I humbly conceive that the putting of some to death in the Old Testament, as it was a punishment to them [the malefactors], so was it a mysterious teaching of us how God hated such and such sins; and mysteries of that kind are gone with other shadows.²⁴

²² [Thomas Erastus (d. 1583), whose name was leant to Erastianism, the doctrine that the civil magistrate has power over the Church in spiritual things.]

²³ [For background info on who Carolostadius possibly was, see the blogpost: [‘Who were Carolostadius and Castellio, Proto-Thonomists?’](#) (2015, 5 paragraphs).]

²⁴ [George Gillespie (emphasis added):

“Now all this being unquestionably true of the Jewish Sanhedrin: if we should suppose, that they had no supreme Sanhedrin but that which had the power of civil Magistracy, then I ask where is that Christian State, which was, or is, or ought to be molded according to this pattern [on the Erastian view].

Must Ministers have vote in Parliament? Must they be civil Lawyers? *must all criminal and capital Judgements be according to the Judicial Law of Moses, and none otherwise?* Must there be no civil punishment, without previous admonition of the offender? Must Parliaments sit, as it were in the Temple of God, and interpret Scripture, which sense is true, and which false, and determine controversies of faith and cases of conscience, and judge of all false doctrines?

Yet all this must be, if there be a parallel made with the Jewish Sanhedrin. I know some divines hold, that the Judicial Law of Moses, so far as concerns the punishments of sins against the moral Law, Idolatry, blasphemy, Sabbath-breaking, adultery, theft, etc. ought to be a rule to the Christian Magistrate, and for my part, I wish more respect were had to it, and that it were more consulted with.” (*Aaron’s Rod* (1646, rep. 1844) p. 2.

15. Interpretation and Application of Specific Case Laws

Morally Binding

15.1 On Blasphemy - *Free Disputation* (1649) p. 183

...Lev. 24:10-14, which is, v. 15-16, "Whosoever curses his God shall bear his sin, and whosoever blasphemes the name of the Lord, he shall surely be put to death; and all the congregation shall certainly stone him, as well the stranger as he that is born in the land, when he blasphemes the name of the Lord, shall be put to death."

There be two things here to me that proves **this was no judicial temporary law binding Israel only**:

1. [the phrase] 'his God' holds forth that **nature** abhors (and **the sum of the first command written in the heart** is) he that curses his Maker whom he is to bless, love, and serve with all his heart, should die.
2. [that] **This law obliges the stranger** and any heathen to be put to death if he should blaspheme God, says **it is the law of nature, and obliges us under the New Testament as being the first and highest sin that nature cries shame, and woe upon**; and we are to conceive it was a lawful war attempted by the ten tribes to go against the tribe of Ruben, God and the half of Manasseh, Josh. 10:11-34, because they set up a new alter to worship (as their brethren conceived) which if true, certainly was a clear apostasy from the God of Israel...

15.2 A Seducing Heretical Teacher²⁵ - *Free Disputation* (1649) Ch. 13, p. 185 ff.

The express law of God and of nature written in the heart of all, proves that the seducer should die (Dt. 13), "If a prophet or a dreamer arise, and say, 'let us go after other gods,' he shall be put to death." That is no temporary law obliging the Jews only. The text says:

²⁵ [See also Section 9 above.]

1. 'Let us go' (says the Dreamer) 'after other Gods to serve them.' **This sin is against the first command, and that immaculate principle of nature graven in the heart of man, 'That there is one only true God, and he only to be served.'**

2. It is against the love of God, v. 2, "*The Lord tryeth you whether you love the Lord your God.*" If he be God, our love is due to Him.

3. It is against the fear of God: v. 4, "*Ye shall fear him.*" **If He be God, He is omnipotent, infinitely great and dreadful: therefore by the light of nature to be feared,** and v. 5, cleaved to as the only happiness of men.

Add to these: that **it is a moral transgression.** If magistracy and lawful revenging of violence and injustice by the minister of God and government against highest soul-oppression be a natural remedy, not a temporary positive salve (as undoubtedly it is), then sure he that seduces so, should die.

1. He 'speaks aversion and turning' away from God, and that is hell and the extremity of miseries.

2. 'He thrusts thee out of the way,' v. 5, a word of violence. Then

3. **He is evil and destructive to the society of men,** which the magistrate by his office should defend, v. 5, 'So shalt thou put away the evil from the midst of thee.'

4. 'He seeks to thrust thee from the Lord thy God, that brought thee out of the land of Egypt.' The word <Hebrew> is to remove from God, as from an unclean and cursed thing; and it expresses excommunication. And then to thrust men away from the Lord in Covenant with us, that can save from the greatest of miseries, must be the highest of injuries, and if the Lord proved a public avenger against the highest wrongs that can be done in a society (as he does), then certainly against this.

5. It is a wrong that God would have 'all Israel to fear,' a wickedness that strikes at the root of society: v. 11, "*And all Israel shall hear and fear, and do no more any such wickedness as this among you.*" And v. 13, such are children of Belial, they make all things and persons cursed they come among, and bring on the land "*the fierce anger of the Lord.*" Verse 17, the intrinsic work and end of the Magistrate "*is to avenge evil doing,*" and so to remove the fierce anger of the Lord

from a land, that the people may fear and not do any such wickedness, as is clear (Dt. 13:10-11; Ex. 32:29-30; Dt. 19:20; Rom. 13:3-5; 1 Pet. 2:14). Now the false prophet is such as brings on all these evils, and therefore if magistrates stand under the New Testament, **and if there be such a sin now as thrusting away people from the Lord who hath, in Christ, delivered us from a greater bondage then that of Egypt, this must be a perpetual Law.**

15.3 Worshipping of other gods - *Free Disputation* (1649) p. 188

Lev. 20:2, "Whosoever of the children of Israel, or of the strangers that sojourn in Israel, that giveth any of his seed to Molech, he shall surely be put to death."

This law, if it did lie upon the strangers and heathen then, it was not judicial, but it must lie on us gentiles now; Who can free us from it?

Objection: But he was put to death not for false worship, but for murdering of his son.

Answer:

1. No Law of God or men can judge that murder which is done without hatred to the party murdered, as is clear (Dt. 19:11-13; 4:42; 19:4). But here, the dearer their sons were to them, they the rather offered them to their God [and hence they weren't put to death for murder].

2. **The text gives no reason why such should be put to death for murder, but for false worship against the First Table:** v. 3, "He defiles my sanctuary, he profanes my holy name;" v. 5, the magistrate must kill such a seducer, for he "commits whoredom" with Molech.

15.4 Death Penalty for Adultery, Murder, Smiting Father & Mother, Kidnapping, Sorcery, Bestiality, Worshipping a False God, a Seducing Heretical Teacher²⁶

Free Disputation (1649) ch. 25, 'Whether the Rulers, by their Office, in Order to Peace, are to Stand to the Laws of Moses for Punishing Seducing Teachers?'

But for the point in hand **the Christian Magistrate is tied and obliged to these punishments to be inflicted for moral offences** [specifically against notorious, public and unyielding heretical teachers] **that the Law of God has ordained, at least, in nature, I prove:**

1. **That which is moral** and cannot be determined by the wisdom and will of man must be determined by the revealed will of God in his Word; but **the punishment of a seducing prophet** that ruins the soul of our brother and makes him twofold more the child of Satan than before **is moral and cannot be determined by the wisdom and will of man; Therefore 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 lawgiver under him, **takes on Him to determine death to be the adulterer's punishment** (Lev. 20:10). And the same He determines to be the punishment of **willful murder** (Ex. 21:12), of **smiting of the father or mother**, (v. 15), of **man-stealing** (v. 16), of **sorcery** (Ex. 22:18), of **bestiality** (22:19), of **sacrificing to a strange God** (22:10). **And upon the same reason, God only, not any mortal man, must determine the**

²⁶ [Gillespie says, "the magistrate ought to put to death a blasphemers, an incestuous person, an adulterer, a witch, or the like (the scriptural warrants which make these crimes capital being in the Old, not in the New Testament)." (*Miscellaneous Questions*, Ch. 13, Section 2, pp. 68-69 in *The Presbyterian's Armoury*, vol. 2.)]

punishment due to such as seduce souls to eternal perdition. For what reason can be imagined why God can be the only determiner of such a punishment of killing, and not for the ruining the soul and making him the child of perdition?

Not Morally Binding

15.4 Four-fold Restitution

Free Disputation (1649) ch. 25, 'Whether the Rulers, by their Office, in Order to Peace, are to Stand to the Laws of Moses for Punishing Seducing Teachers?'

4. No man but sees [that] **the punishment of theft is of common moral equity, and obliges all nations, but the manner or degree of punishment is more positive: as to punish theft by restoring four oxen for the stealing of one ox, does not to oblige all nations,** but some other bodily punishment, as whipping, may be used against thieves.

15.5 Boring a Hole in Servant's Ear, Death for Gathering Sticks on Sabbath, Spitting on the Face, Marrying a Captive Woman of Another Religion

Divine Right of Church Government (1646) p. 494

...also **some punishments were merely symbolic,** to teach the detestation of such a vice, **as the boring with an aul the ear of him that loved his master,** and desired still to serve him, and the making of him his perpetual servant. I should think the **punishing with death the man**

that gathered sticks on the Sabbath was such;²⁷ and in all these, the punishing of a sin against the Moral Law by the magistrate is moral and perpetual; but the punishing of every sin against the Moral Law *tali modo* [in such a manner], so and so, with death, with spitting on the face: I much doubt if these punishments in particular, and in their positive determination to the people of the Jews, be moral and perpetual, as: he that would marry a captive woman of another religion, is to cause her first to pare her nails and wash herself, and give her a month, or less time, to mourn the death of her parents, which was a judicial, not a ceremonial law.

That this should be perpetual because Christ in particular has not abolished it, to me seems most unjust; for as Paul says, "He that is circumcised becomes debtor to the whole law," [is] sure to all the ceremonies of Moses' Law; so I argue, *a pari*, 'from the like': He that will keep one judicial law, because judicial and given by Moses, becomes debtor to keep the whole Judicial Law under pain of God's eternal wrath.

Free Disputation (1649) ch. 14

2... Nor can the Libertines show us of a Ceremonial death inflicted for the transgression of a moral law, which transgression is now made free from all bodily punishment [they say]. Indeed **the man that refused to raise up feed to his brother was put to shame by the law, and we are**

²⁷ ["The Puritan doctrine generally opposed the extreme strictness which some accorded the Sabbath. Some argued that: (1) Ex. 16:23 prohibited all baking and cooking on the Sabbath; (2) Ex. 16:29 forbade all walking on the Sabbath [including acts of necessity]; (3) Ex. 20:10 prohibited all work of any kind on the Sabbath [even acts of necessity]; (4) Ex. 31:14-15; 35:3; Num. 15:35 forbade all work, even the gathering of sticks for a fire, on the Sabbath. (Cf. George Walker, *The Doctrine of the Holy Weekly Sabbath* (1641) pp. 117-9)

The puritan answer to this excessive strictness was to direct attention to the context of each Biblical reference... Ex. 20:10 was never intended to forbid works of necessity and charity, as Christ Himself makes clear when He shows that it was lawful to pull a beast out of a pit on the Sabbath (Lk. 14:5), to lead a beast to water on the Sabbath (Lk. 13:15) and to circumcise a man on the Sabbath (Jn. 7:22-23). (*Ibid.*, p. 121) Ex. 35:3 forbade the kindling of a fire on the Sabbath, but the context makes it clear that fires in general were not prohibited; rather fires for work on the Tabernacle were forbidden. (*Ibid.*, p. 121) Ex. 31:14-15 and Num. 15:35 make work on the Sabbath punishable by death; however, Walker argues that it is work done presumptuously (cf. Num. 15:30-31), i.e. by contemptuously despising the commandment of God, which incurs the death penalty. (*Ibid.* p. 122)" James Dennison, *The Market Day of the Soul: the Puritan Doctrine of the Sabbath in England, 1532-1700* (RHB, 2008) pp. 133-4]

freed from both the law and the penalty thereof and the man that gathered sticks on the Sabbath was put to death by an answer from God's mouth, but the breach of the holy Sabbath instituted before the fall is no Ceremonial transgression.

Nor do we think that every violation of the Sabbath was punished by death, but that the magistrate, masters and fathers are not to punish with bodily coercive power the transgressors of the fourth command is most false. For what the magistrate commands the subject, the master the servant, the father, the sons and **they which have warrant from the Moral law to command in these relations**, that they command in order to the sword and rod if their commandments find no other welcome but rebellion, for the power of magistrate and master, yea, and of the father now in the state of sin is essentially coercive: they may compel their inferiors by strong hand either to do or suffer the will of God, which is sufficient to prove our point.

Though it be true [that] **some moral transgressions Moses punished with death (as Sabbath-breaking)**, it follows not therefore [that] the godly prince may now punish it with death; but it follows not therefore [that] such transgressors are made free through Christ of all bodily punishment, as Libertines infer, for though the temporariness of the punishment be only in the measure of punishment, yet not in the punishment itself.

15.6 Destroying a Whole City for Harboring an Idolater

Free Disputation (1649) ch. 25, 'Whether the Rulers, by their Office, in Order to Peace, are to Stand to the Laws of Moses for Punishing Seducing Teachers?', p. 298

Judicial Laws may be judicial and Mosaic, and so not obligatory to us, according to the degree and quality of punishment:

[1.] Such as is Dt. 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 perpetual obligation, because the magistrate bears the sword to take vengeance on ill doers and so on these that are partakers of his ill deeds [by harboring him] who brings another Gospel (2 Jn. 5:10).

The End