

The Second Use of the Law as Understood in the Westminster Assembly’s Scottish Context

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Introduction: Since this presentation concerns the second use of the law, we should agree as to what the law’s “second use” means. To underline the importance of a proper definition, turn to a contemporary blog to observe its misuse. A former colleague from the south addressed a controversy within the PCA and asked, “So, what’s really going on here? I wonder if the real missing distinction here is not the distinction between law and gospel, but the distinction between the *second use and third use of the law* [original italics]. The clear focus of pastor [name withdrawn]’s response article was on the “second use” of God’s moral law, namely that the law functions to expose our sinfulness, reveal our failure, and to drive us to Christ.” The colleague added: “Put differently, the law is not just something that condemns (second use), but it is also, for the believer, a necessary guide to holiness (third use).” He concluded: “If one thinks mainly in “second use” categories, then [the article’s] call to obedience might sound like a call to legalism.”

Notice the professor’s definition of the second use of the law: he says that it exposes our sinfulness, reveals our failure, and condemns. While the law does so function, this learned colleague is not speaking of the second use of the law at all—but, in fact, of the first. Thus, when a Seminary professor in the midst of theological controversy can be so mistaken, such writing underlines the contemporary relevance for proper terms and categories.

Reformed theology defines the first use of the law as the rule of God’s judgment over men.¹ The first use of the law, operative before conversion, is sometimes called the “pedagogical” use. It is the law as a standard for righteousness that crushes and condemns us because of our sin. The second use of the law, this presentation’s topic, is the restraint of sin. The third use of the law is the guide for the righteous walk of the believer.²

¹ Robert Letham, *The Westminster Assembly* (Phillipsburg: P&R, 2009), 295: “The [earlier] classic confessions provide evidence of the threefold division of the law, but do not put it in precise terms.” See *RPCNA Testimony* 19:1.

² Andrew Woolsey, *Unity and Continuity in Covenantal Thought: a study in the Reformed Tradition to the Westminster Assembly* (Grand Rapids: Reformation Heritage, 2012), 296, the first use of the law revealed to man his real need as a sinner and pointed him to Christ. Calvin’s second use had a more social and civil function. Here the law acted as a restraint or a deterrent to the behavior of those who were not believers, and whose depravity could otherwise boil over into all manner of lawlessness. Calvin developed it in context of civil government. For the development of the three uses of the law, see J. V. Fesko, *The Theology of the Westminster Standards: Historical Context and Theological Insights* (Wheaton, ILL: Crossway, 2014), 273ff.

In fact, the first and the third uses of the law are much easier to understand and apply than is the second. This paper will try to demonstrate the beauty of the second use so that we view it like the sweet middle of an Oreo cookie! Having briefly defined the terms, let's turn to the Westminster Standards' analysis.

I. Definition of Second Use of the Law in the Westminster Standards.

Definition in Confession of Faith. God's law was the topic of Westminster Confession of Faith 19. The divines introduced the law that was spoken to Adam in the garden as a covenant of works. This law, as a covenant of works, was binding on all of his posterity.³ The theological notion of the Adamic law, as a covenant of works binding his posterity, had roots reaching back to the very end of the 16th century in Scottish theology.⁴

According to the divines, after the fall, God gave "this law" (the reference connects back to the Adamic law) as a perfect rule of righteousness, called the Ten Commandments. The Ten Commandments were divided into the two-fold duties toward God and man and together were termed the perfect rule of righteousness.⁵

The divines argued that beside this law, which they now term "the moral," another law, called the "ceremonial" was given by God to the church under age. That law had "typical" ordinances in worship that prefigured Christ as well as some instructions and moral duties. The divines concluded: "All which ceremonial laws are now abrogated under the New Testament."⁶

The chapter's fourth section presented a third type of law with a short definition that should be read in full: "To them also as a body politic, 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."

The fifth section said that the "moral law" binds both Christians and non-Christians to obedience. Their wording was strong as they contended that the moral law, "doth for ever bind all...to the obedience thereof." They stressed that Christ's redemptive work did not dissolve the obligation of obedience, but rather strengthened it.⁷

The sixth section of the *Westminster Confession of Faith* presented the second use fully within the context of the first and third. They first determined that the law, as a covenant of works, cannot justify but functions as a rule of life: the classic third use of the law. The moral law binds and directs in that humble walk. Likewise, the law demonstrates our sin: the classic first use.⁸

³ WCF 19.1. See Wayne Spear, *Faith of our Fathers*, (Pittsburgh: Crown & Covenant), 100 and Robert Letham, *Westminster Assembly*, 293.

⁴ See the pioneering work of Robert Rollock of Edinburgh University, *Questiones et Responsa Aliquot de Foedere Dei* (Edinburgh: 1596).

⁵ WCF 19.2. See Spear, *Faith of our Fathers*, 101.

⁶ WCF 19.3; Spear, *Faith of our Fathers*, 102.

⁷ See Letham, *Westminster Assembly*, 297.

⁸ See Spear, *Faith of our Fathers*, 103-04.

Then they moved to the second use, as the law restrains corruption, forbids sin, and shows God's approval for obedience with promises that encourage us in our obedience.⁹

Definition in Westminster Longer Catechism. At Westminster Longer Catechism 92, the law that was given to Adam in the garden was actually called “the moral law,” a term more generally used to describe the Ten Commandments. The following question (WLC 93) contains a beautiful summary of the moral law. The divines then introduced the complex notion that while no one can attain righteousness and life by the moral law, there was a “great use thereof” for both the elect and reprobate (WLC 94).¹⁰

WLC 95 continued the theme that the moral law convinces men of their sin [the first use] but included that they were also bound to “walk accordingly”.¹¹ WLC 97 reminded believers that they were not under the law as a covenant of works, (repeating WCF 19.6), but they were also to be thankful to Christ for his fulfilling of the law, and that they should take great care to conform themselves to the law's demands.

The larger catechism's elaboration of the law, which seems to be more complex than and extend beyond the confession, was specifically crafted to deal with the contemporary problem of antinomianism.¹² Having defined the law's second use, let's examine its function.¹³

II. Function of Second Use of Law in Westminster Standards.

Theological Context. The Westminster Divines faced a number of hostile positions concerning the second use of the law. On the one side was that of the papacy, and connected to their arguments were problems presented by the Erastians. Analysis of the Erastians will appear in a later section.

On the other extreme were the antinomians. The antinomians argued that believers were no longer subject to God's law.¹⁴ The Law's main purpose, for believers, was simply to give them joy at their freedom from its constraints.¹⁵

⁹ WCF 19.6: “It is likewise of use to regenerate, to restrain their corruptions, in that it forbids sin; and the threatenings of it serve to show what even their sins deserve, and what afflictions in this life they may expect for them, although freed from the curse thereof threatened in the law. The promises of it, in like manner, show them God's approbation of obedience, and what blessings they may expect upon the performance thereof, although not as due to them by the law as a covenant of works: so as a man's doing good, and refraining from evil because the law encourageth to the one, and deterreth from the other, is no evidence of his being under the law, and not under grace.”

¹⁰ This is similar to WCF 19.6, “Although true believers be not under the law as a covenant of works, to be thereby justified or condemned; yet it of great use to them, as well as to others...”

¹¹ Yet, WLC 96 clearly elaborated the first use as it condemns the unregenerate.

¹² Letham, *Westminster Assembly*, 295: “...this chapter is crucial in rebutting [the antinomians], and this statement is at the heart of it.”

¹³ A. A. Hodge, *Westminster Confession*, 281 argues that chapter 19 presented four classifications of the law. There were those grounded in the divine nature and therefore universal, those grounded in the divine will and binding only so long as commanded, those grounded in temporary circumstances and binding to those circumstances, and finally those grounded in universal or permanent human laws and relations, and thus as permanent as those relations.

¹⁴ See David R. Como, *Blown by the Spirit. Puritanism and the Emergence of an Antinomian Underground in Pre-Civil-War England* (Redwood City: Stanford University Press, 2004), 211.

For the antinomian, justification led to good works, and they were performed freely. The antinomians viewed justification as a Godward action while sanctification was a lifelong process.¹⁶ There was actually no marked difference between the antinomian lifestyle and that of the other puritans, the antinomians argued, however, that the internal motivation for good works was gratitude, not fear.¹⁷

Among others, the Antinomian's problem was their unclear definition of good works.¹⁸ Eventually, they apparently believed that there was some type of an "inner" law that made Moses' "outer" law unnecessary.¹⁹ Understanding something about antinomianism helps analysis of chapter 20.

Function in Chapter 20: of Christian liberty and liberty of conscience.²⁰ In the first part of the chapter the moral law was described as a curse. Also, they determined that believers were set free from the yoke of the ceremonial law. The next section treated the situation when there were doctrines or commandments that touch faith or worship that were contrary to his Word or beside it. The divines argued that there was no obligation to obey or believe those commands. In the third section, they concluded that this new freedom in Christ was not for pursuing sin. The fourth section concerned civil power and taught that Christian liberty cannot oppose lawful civil or ecclesiastical power. To resist lawful civil or ecclesiastical power, in the name of liberty, was to resist "the ordinance of God."

However, the divines understood the reality of church life—that there were wicked people who held false teachings and practice. Their directions for action were very clear—but not presently a common opinion among evangelicals and even among Presbyterians. When someone asserted opinions or practices contrary to the light of nature, or the known principles of Christianity, (concerning faith, worship, conversation or the power of godliness) such opinions harmed the Church's external peace and those persons may be called to account by both the church as well as civil magistrate.²¹ This teaching, including civil punishment for wicked moral actions, provided justification for the civil war and the king's eventual execution.

¹⁵ Bell, *Calvin and Scottish Theology*, comments, 65 n. 74, Knox's: "...evangelical concern for holiness and purity of the church, as evidenced by the place given to discipline as a mark of the church, kept him from an antinomian error."

¹⁶ See Como, *Blown by the Spirit*, 213.

¹⁷ See Como, *Blown by the Spirit*, 215.

¹⁸ See Como, *Blown by the Spirit*, 216.

¹⁹ See Como, *Blown by the Spirit*, 79, 217.

²⁰ For background concerning the repressions under Laud, see Letham, *Westminster Assembly*, 298 and Como, *Blown by the Spirit*, 75.

²¹ WCF 20.4: "...and, for their publishing of such opinions, or maintaining of such practices, as are contrary to the light of nature, or to the known principles of Christianity (whether concerning faith, worship, or conversation), or to the power of godliness; or, such erroneous opinions or practices, as either in their own nature, or in the manner of publishing or maintaining them, are destructive to the external peace and order which Christ hath established in the Church, they may lawfully be called to account, and proceeded against, by the censures of the Church, and by the power or the civil magistrate." For those interested, the *RPCNA Testimony* 20.6 does not delete the last part but says: "the civil magistrate has no authority to pronounce ecclesiastical censures." Thus, the WCF as originally written is the current confessional status of the RPCNA- that "church" discipline may include the civil magistrate.

Function in Chapter 21: of religious worship and the Sabbath Day. The first, second, fifth, and sixth parts of the chapter are famous for its view of God and his worship, but are not essential to analysis of the law's second function.²² However, the third and fourth sections concerned prayer, which was enjoined upon all humans, not just on believers. This teaching clearly presents contemporary challenges for civic life.²³ Likewise, in the seventh and eighth sections, Sunday was called "the Lord's Day" or "the Christian Sabbath." The divines argued that this Sabbath was a creation ordinance and was thus perpetually binding on all men at all times, which also presents contemporary challenges for civic life.²⁴

Function in Chapter 22: on Lawful oaths and vows. The Scots were a nation of oath takers. As a nation they had subscribed to the solemn league and covenant. As such, they stood against the Anabaptist position against public vows.²⁵

Function in Chapter 23: on the Civil Magistrate.²⁶ The Divines began with broad principles relative to civil government. The civil magistrate was ordained under God, "for His own glory", that is, the civil ruler's first task was to promote the glory of the triune God. Then comes their responsibility to promote the common good.²⁷

The magistrate encourages those who are good and punishes evildoers. This teaching strikes at the heart of the issue of the second use. How did the divines understand those who do good in contrast with those who were evildoers? Earlier, the Scots Confession, section 14, taught that God regards works as good as those that are found to be in accord with the first and second tables of the Decalogue.²⁸ The *French Confession*, written by Calvin in 1557 and expanded in 1599, likewise said that civil rulers were responsible to implement the two tables of the law.²⁹

²² WCF 21.1: "The light of nature showeth that there is a God, who hath lordship and sovereignty over all; is good, and doth good unto all; and is therefore to be feared, loved, praised, called upon, trusted in, and served, with all the heart, and with all the soul, and with all the might. But the acceptable way of worshipping the true God is instituted by Himself, and so limited by His own revealed will, that He may not be worshipped according to the imaginations and devices of men, or the suggestions of Satan, under any visible representation, or any other way not prescribed in the Holy Scripture."

²³ See A. A. Hodge, *The Confession of Faith*, (Edinburgh: Banner of Truth, repr. 1978), 276. This teaching would probably be difficult to reconcile with a two kingdom theology.

²⁴ Hodge, *Confession of Faith*, 281-83 argues that the Sabbath is grounded in part in universal and permanent human needs (ground #4 in footnote #13) and thus remains in full force among all men of all nations, and is grounded as well in God's will as supreme Lord (ground #2). Letham, *Westminster Assembly*, 309-10, says that they wrongly did not underline the eternal Sabbath rest.

²⁵ See Letham, *Westminster Assembly*, 311. The *RPCNA testimony* at 22.9 rightly argues that it is appropriate for church and nation to covenant to be the Lord's and to serve him. An important question is to determine how such covenanting works out in contemporary society.

²⁶ Letham, *Westminster Assembly*, 293-94.

²⁷ WCF 23.1-2. Letham, *Westminster Assembly*, 311.

²⁸ See Letham, *Westminster Assembly*, 294.

²⁹ See Letham, *Westminster Assembly*, 295, The French Confession 23 says that the Decalogue is the basis for civil law: "the ordinances of the law came to an end at the advent of Jesus Christ; but although the ceremonies are no more in use, yet their substance and truth remain in the person of him in whom they are fulfilled. And, moreover, we must seek aid from the law and the prophets for the ruling of our lives, as well as for our confirmation in the promises of the gospel." Article 39: "God wishes to have the world governed by laws and magistrates, so that some restraint may be put upon its disordered appetites." "...so he has put the sword into the hands of magistrates to suppress crimes against the first as well as the second table of the commandments of God."

With these earlier confessional documents, the Confession's teaching makes sense. Evil actions were specifically those not in accord with God's moral law. The divines then solidified this prior teaching with the controversial notion (for today) that the civil magistrate must protect the church.³⁰

The Catechism's following section teaches that the Old Testament Civil Law was not abrogated-but expired. This section is sufficiently difficult to understand and apply that a number of basic interpretative options have been presented.³¹ The question is how to define the word "expired" relative to "abrogated". To aid interpretation, a similar expression could sound like this: "The President has expired. Thus, he can no longer give the Seminary any rules for its life as he could when he was not expired." In contrast is this expression: "The Board of Trustees has determined that even though the President is alive, for reasons of sufficient gravity, all of the rules that he has established up until this time as President have been abrogated; they have been overturned." This unsophisticated example can hopefully demonstrate the practical difference between the law expiring (as a man can expire) and the law being abrogated (as a man's teachings or rulings may be abrogated). Thus, the divines argued that the law is like a man who has expired, and even though he is gone, the "general equity" that he taught, while alive, continues.³²

Function in the Larger Catechism. WLC 98 says that the moral law is summarily comprehended in the Ten Commandments. They provided rules properly to understand the Ten Commandments. Those rules answer the question of how the moral law functions.

Their eight rules (WLC 99) can be summarized: God's perfect law binds all men to complete obedience [rule 1] including the inner man as well as the outer [rule 2] and that the Ten Commandments extend beyond the specific wording of the commands themselves [rules 3-6]. That what is commanded or forbidden to ourselves, [rule 7] "we are bound, according to our places, to endeavor that it may be avoided or performed by others according to the duty of their places." Thus, each adult has responsibilities as individuals, as parents, and as members of society.

III. Application of Second Use of Law in Westminster Standards.

Magistrate to uphold the Moral Law.³³ Background information on the magistrate takes us back nearly one hundred years before the Westminster Confession. John Knox, in *The*

³⁰ WCF 23.2. Letham, *Westminster Assembly*, 312.

³¹ The theonomic interpretation adopts the confession without modification of the passage. Most contemporary Presbyterian denominations either modify the text [some as if it were the original] or delete the section and re-write it [the RPCNA option].

³² This section contains a number of unresolved problems that could be explored at a later time. For example, theonomists argue that the ceremonial law is gone but something remains in the abrogated law. Connected is also discussion of binding case law.

³³ Inherent in this subject is a debated topic that is tangentially related to two kingdom theology. Since I analyzed Two Kingdom Theology a year ago (<https://www.youtube.com/watch?v=jAmyBHsS7CE>, accessed March 25, 2015), I will only summarize. The Two Kingdom position is that the laws of the state should be based on natural law and common morality. However, according to the divines, the magistrate upholds the moral law. The Two Kingdom theologian would need to demonstrate that natural law and common morality have the same content as the divine's

Appellation (1558) first used the idea of covenant in the specific context of Scottish political theory.³⁴ According to his analysis, the civil magistrate bore responsibility for the proper observance of the true religion within that magistrate's community.³⁵ Knox referenced King Josiah who made a covenant with the people, and then argued that this type of covenanting was not just for the OT era but was also applicable to the time of the gospel. Knox connected back to Exodus 34 and argued that when gentiles come to Christ, they are then under covenantal requirements.³⁶ His analysis of Psalm 2 in this context was that the admonition to kiss the son in the OT also applied to the time of the Gospel.³⁷ Using the same passage, Knox also countered the argument that it was exclusively the king's responsibility to govern religion, and not that of the magistrates.³⁸

Thus, believers who come to Christ through the preaching of the gospel were to uphold God's law.³⁹ Knox had already put into practice what he wrote in *The Appellation*. He had encouraged

understanding of the moral law as elaborated, for example, in the WLC on the Ten commandments. If they could make such an argument then their opinion on the second use of the law could perhaps square with the confession.

³⁴ Knox in *The Appellation of John Knox* (McGavin edition, 1830), 375-82 argued that he was making a legitimate defense, even though he had been declared a heretic and burned in effigy, to appeal to the temporal magistrate against the "visible church". He argued that he had a right to be protected and defended by the magistrates. Having established his case, Knox argued that the magistrates must answer to God if they fail in their duty, specifically to 382: "promote the glory of God, to provide that your subjects be rightly instructed in the true religion; that they be defended from all oppression and tyranny; that true teachers may be maintained" and that those who oppose godly teaching "may be removed and punished as God's law prescribeth."

³⁵ Knox, *Appellation*, 382-89 cited Romans 13 and argued that magistrates must provide for proper instruction in religion (otherwise starving their subjects) and to oppose corruptions (accusing the bishops of greater wickedness than that of Sodom and Gomorrah). The magistrates' opposition to Roman Catholic wickedness including repressing their tyranny, punishing them, and replacing them with true preachers. If the magistrates fail in their duty, they will then fall under God's judgment. He repeated, 388: "...to repress the tyranny of your bishops, and to defend the innocents professing the truth."

³⁶ Knox, *Appellation*, 386: "Of which histories [he had provided many OT examples] it is evident that the reformation of religion in all points, together with the punishment of false teachers, doth appertain to the power of the civil magistrate. For what God required of them, his justice must require of others having the like charge and authority: what he did approve in them, he cannot but approve in all others, who with like zeal and sincerity, do enterprise to purge the Lord's temple and sanctuary."

³⁷ Knox, *Appellation*, 387: "...when Christ Jesus doth reign and fight in his spiritual kingdom...whereof it is evident that the rulers, magistrates, and judges, now in Christ's kingdom, are no less bound to obedience unto God, than were those under the law."

³⁸ Knox, *Appellation*, 388-89, 389: "For it is no less blasphemy to say, that God hath commanded kings to be obeyed, when they command impiety, than to say, that God by his precept is author and maintainer of all iniquity." When a king commands wickedness, God "hath commanded no obedience, but rather he hath approved, year and greatly rewarded such, as have opposed themselves to their ungodly commandments..." as exemplified by Daniel and his companions. Knox also hinted that it was 390: "the duty of every man in his vocation, but chiefly of the nobility..." "...that God will neither excuse nobility nor people, but the nobility least of all, that obey and follow their kings in manifest iniquity." For more analysis, see R. Gamble, "The Christian and the Tyrant: Beza and Knox on political resistance theory," *WTJ* 1984.

³⁹ In fact, Knox's admonition was not limited to the nobles. At the same time that he published the *Appellation* he produced his *Letter to the commonality of Scotland*. After comparing the Roman Catholic leaders to Turks [as well as to Antichrist], he reminded those without political power that there is a point where all men are equal- all are born in Adam's sin, all can taste of Christ's redemption, and all redeemed are called to deny themselves. Using the same analysis presented in the *Appellation* on Psalm 2, he argued that commoners have an obligation to support the "spiritual tabernacle" the church. In fact, before God no one could allege the excuse that since they were not rulers they had no obligation to reform religion. Knox then went on the offensive- and asserted that they as subjects "may

the Scots nobles as early as 1556 to enter into bands or covenant together for the sake of protecting Protestantism with force of arms against Roman Catholic oppression.⁴⁰ The WCF, following Knox's theology and political application, also insisted that the civil magistrate uphold the moral law.⁴¹

To help us comprehend the Standard's teaching requires acquaintance with the concepts of Christ's essential Kingship and his Mediatorial Kingship. Knox and the divines held their positions because of Christ's rights in his essential kingdom, called the *regnum potentiae* by Samuel Rutherford (a Scottish commissioner to the Assembly). God as Creator has a universal kingdom (*regnum potentiae*) of power as Lord of Hosts or Lord over all aspects of life on this earth. Thus, God's moral law binds all men at all times because of God's essential kingship,⁴² combined with the law of nature which also demonstrates God's lordship,⁴³ and that even the law of nature demonstrates that a due proportion of time should be given by all men to God in worship.⁴⁴

However, God's rights in Christ extend beyond the essential kingship to what is termed the Mediatorial kingship. The Mediatorial kingship teaches that Christ, as the resurrected one, is king over the nations not only in his essential but also in his Mediatorial capacity as the conquering God-man. Specifically, God the Father appointed him to rule over the nations from the time of his resurrection until the end of the world. To be clear, according to the divines, Christ's Mediatorial power was not restricted simply to believers and the church, but that civil rulers were subject to the Messiah and were bound to recognize his revealed will and promote the interests of his kingdom.⁴⁵

In conclusion, the divine's understanding of the duties of the civil magistrate (WCF 23.2), argued that magistrates, "ought especially to maintain piety...." Thus, the magistrate had both the authority and the duty to preserve peace within the church, so "...that the truth of God be kept pure and entire...."⁴⁶

Civil Government as a Moral Being. Inherently connected to the Westminster Confession of Faith's understanding of Christ's kingdoms was a presupposition that is foreign to those of us who are familiar with the United States constitution. The Westminster divines viewed the state as a "moral being," and not merely as a collection of individuals organized under a sovereign

lawfully require of your superiors, be it of your king, be it of your lords...that they provide for you true preachers..." The truly converted should fear God and demand change "and to demand and crave the same of your superiors, which most lawfully ye may do...". Knox, *Letter to the commonality of Scotland* (McGavin edition, 1830), 401-06.

⁴⁰ For elaboration, see M. Charles Bell, *Calvin and Scottish Theology* (Edinburgh: The Handsel Press, 1985), 41-43.

⁴¹ WCF 23.1, the civil magistrate is to be "under him" for his own glory and the public good.

⁴² WCF 19.5.

⁴³ WCF 21.1.

⁴⁴ See WCF 21.7.

⁴⁵ This teaching has been articulated in some contemporary Presbyterian Churches. See the *Testimony* of the Reformed Presbyterian Church of Ireland, Part I:38, specifically, "nations and associations of men are in their corporate capacity, subject to the law and authority of Christ" as cited by J. G. Vos, *Scottish Covenanters*, 214.

⁴⁶ WCF 23.2 has not been rejected or modified by the *RPCNA testimony*. The magistrate has the *authority* and duty to preserve peace within the church.

government.⁴⁷ The notion of civil government as a moral being flowed out of its Scottish and English historical context.⁴⁸

While it is an interesting topic, the divine's understanding of the relationship between the sovereign and the people, a relationship of contract based upon covenant, is not the issue that needs to be resolved. Debates and discussions on that topic reach back in time to Aristotle, were advanced through the middle ages, and were particularly discussed in the 16th century.⁴⁹

Specifically, the Scottish commonwealth had covenanted, as a nation, to accept Christ as king not only of the church but also of the state. Those 16th and 17th century actions flow smoothly out of the ancient Scottish notion of kingship. The earliest "Scotland" (Kingdom of the Picts), reached back to 760 and was politically structured along the line of clans or families.⁵⁰ Scotland was politically structured such that there were seven great chiefs, each one a King in his own right, who was seated beside and under a high King. As Scotland progressed historically, her political and social history was not the same as that of England. Scottish feudalism was a tribalism or tribo-feudalism, and Scottish clans did not develop an English class system.⁵¹

The tribo-feudal phenomenon was not limited to the Scottish highlands but was legally incorporated throughout the entire nation.⁵² Thus, through the early medieval period there was no Scottish analogy to the English Parliament. However, the different political development between Scotland and England erupted during the struggle for kingship between the Bruces and Balliols in the 14th century, a dispute adjudicated by the English King Edward.⁵³

⁴⁷ See Robert Emery, "Church and State in the Early Republic," *Journal of Law & Religion*, 490.

⁴⁸ For example, Knox argued that both England and Scotland were called to keep God's covenant by suppressing the mass. See Bell, *Calvin and Scottish Theology*, 42.

⁴⁹ The social contract proper was found in Aquinas, John of Paris, William of Ockham, Marsiglio of Padua and Nicholas of Cusa. When the king was a tyrant, then he need not be obeyed. He had broken his *pactum* with the people. This provides some historical background to Samuel Rutherford's notion of the relationship between the sovereign and the people. For more information, see R. Gamble, "The Christian and the Tyrant. Beza and Knox on Political Resistance theory" *WTJ*, 1984.

⁵⁰ Sir Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, (1945), 119.

⁵¹ See I. F. Grant, *The Social and Economic Development of Scotland before 1603*, (Oliver & Boyd, 1930) 502, 516 as cited by Sir Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland*, (Johnston & Bacon, 1945, 8th edition 1971), 15–16, 25, 37, 39, 41. See also Learney, "The Robes", 121.

⁵² Scotland grew along these lines: There was a king in Northumbria and at Bamburgh in Bernicia there were High Reeves [perhaps a Scots word equivalent to high steward], a position lower than an earl. The *Annals of Ulster* called them king of the north Saxons. The Scots King Malcolm, in 973, assumed the title King of the Cumbrians, a claim that included the area of Strathclyde. However, Owen the Bald of Strathclyde gradually subdued by the Scots (between 1018-34), but then Duncan mac Crinan (Scottish King 1034-40) merged Strathclyde fully into Scotland. King Malcom in 1054 ruled as king in Scotland ostensibly under the power of the earl of Northumbria, and was sometimes called son of the King of the Cumbrians. In 1066 with the Norman invasion, England began its own unique history. Yet, there were Norman influences in Scotland as well.

⁵³ For example, both the Bruce and Balliol families both descended from female lines of the royal house (a Pictish aspect) and were granted candidacy. The Bruce argued his case along the lines of Tanistry while John of Balliol argued along primogeniture. The English King argued for primogeniture, thus favoring Balliol. For more information, see George Neilson, "Bruce versus Balliol, 1291-92," *The Scottish Historical Review* Vol. 16, Num. 61 (1919), 1-14 who narrated the documentary evidence and history of analysis.

The differences between the two nations became more apparent in the 1430's after the Scottish King James I returned from a decade long captivity in England.⁵⁴ Nevertheless, he mandated no sudden changes in Scottish society or law.

In fact, over a century later, in 1556, the Scottish Parliament made clear that the title "King of Scotland" was a personal high king and not the territorial king of Scotland.⁵⁵ In connection, the Scots did not have anything like the English "house of commons" until after the Reformation.⁵⁶

Thus, the Scottish notion of the place of the king in their society is historically identifiable. In summary, the first phase, dated from 760 to 1430 had a high king ruling with seven (or more) great Earls (or sub-Kings). Then legal and social changes began in 1430 which lasted until the Reformation. The period from the Reformation to the civil war in 1640 is also identifiable,⁵⁷ which moved eventually to the current situation.

⁵⁴ Learney, "The Robes", 121.

⁵⁵ Learney, "The Robes", 131-32.

⁵⁶ Learney, "The Robes", 121, 131, 135. By a statute dated 20th December 1567 Scotland created the personal peerage *Barones Majores*, later denominated Lords of Parliament, constituted as a distinct Estit to replace the clergy (who as Archbishops sat as Earls). The Peerage had been the Order of Earls (in origin the provincial kings) who sat in Parliament "on the benches of the Throne" and the Baronage who sat "on the steps of the throne". In 1585 legislation was begun which led to Freeholders, other than Barons, being elected Shire Commissioners, and obtaining seats in Parliament within what continued to be entitled the "Estate of the Baronage." That same year's "Statute of Apparells" mandated that each estate have appropriate attire. Since 1455, the Earl's parliamentary robes were different from those of the Barons (major and minor barons wore the same), and the new Estate (elected Freeholders) was to have robes that differentiated them from the higher orders.

⁵⁷ James VI of Scotland/James I of England and Ireland, legally abolished tanistry after 1603.