

BIBLICAL PRECEPTS FOR LAW AND JUSTICE

Few people understand that our accusatorial trial and prosecution system was implemented by our founding fathers based on their knowledge of the Bible. Fewer still, including true Christians, realize that this very same system is to be employed in the local church, as it handles its everyday affairs of this life. This is part of the testing, preparation, and training for Christians who earn the right to rule and reign with their God and Savior, the Lord Jesus Christ, when He comes back as King, to rule this earth from Jerusalem for one thousand years.

Does any one of you, when he has a case against his neighbor, dare to go to law before the unrighteous and not before the saints? Or do you not know that the saints will judge the world? If the world is judged by you, are you not competent to constitute the smallest law courts? Do you not know that we will judge angels? How much more matters of this life? I COR. 6:2-3 NASB

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THE FIFTH AMENDMENT OF THE CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; **nor shall be compelled in any Criminal Case to be a witness against himself**, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

“Surely, in popular parlance and even in legal literature, the term ‘Fifth Amendment’ in the context of our time is commonly regarded as being synonymous with **the privilege against self-incrimination.**” Chief Justice Earl Warren in *Quinn vs. U.S.*, 349 U.S. 155, at 163 (1955).

“Ours is the **accusatorial** as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent... **Under our system society carries the burden of proving its charges against the accused, not out of his own mouth.**” Justice Felix Frankfurter in *Watts vs. Indiana*, 338 U.S. 49, at 54 (1949).

“...the American system of criminal prosecution is accusatorial, not inquisitorial, and ...the Fifth Amendment privilege is its essential mainstay.” Justice William J. Brennan in *Malloy vs. Hogan*, 378 U.S. 1, at 7 (1964).

“The privilege against self-incrimination is a right that was hard-earned by our forefathers. The reasons for its inclusion in the Constitution – and the necessities for its preservation – are to be found in the lessons of history.” Chief Justice Earl Warren in *Quinn vs. U.S.*, 349 U.S. 155, at 161 (1955).

“The privilege against self-incrimination is a specific provision of which it is peculiarly true that **‘a page of history is worth a volume of logic.’**” Justice Felix Frankfurter in *Ullmann vs. U.S.*, 350 U.S. 422, at 438 (1956).

MOSAIC/TALMUDIC LAW

On pages 433-434 of his Pulitzer prize-winning book, *Origins of the Fifth Amendment, The Right Against Self-Incrimination*, Oxford University Press, historian Leonard W. Levy points out the origin of the right against self-incrimination in the law that God gave to Moses as recorded in the Old Testament of the Bible. Levy states (emphasis added):

No description of the origins of the right against self-incrimination would be complete without acknowledging **the existence of the right in ancient Jewish law**. The phrase “from time immemorial,” so often used in English common-law sources to describe a rule hundreds of years old, **most fittingly dates the origins of the right in the Israel of Biblical times**.

The Talmud is an encyclopedic compilation of the “Tradition,” the ancient oral teachings **based on the five books of Moses**. Its composition was begun before the Christian era and ended in the sixth century A.D. Divided into six general subjects or “orders” consisting of sixty-three books or “tractates,” its English translation spreads over fifty volumes. They include canonically authoritative discussions of virtually every subject, among which is the law. Talmudic criminal procedure was strictly accusatorial in character, reflecting a humane concern for life and liberty. If there was anything inquisitorial in the procedure, it was the severe examination by the court of the witnesses for the prosecution, matched by excessively harsh penalties for false or refuted testimony. **The sworn evidence of two eye-witnesses to the crime was required for conviction**. The rabbis who served as the judges on the Sanhedrin, the criminal court, examined and cross-examined the accusers before charging the defendant. Stringent rules of evidence prevailed; the courts refused to accept either hearsay or circumstantial evidence. As an example of the latter, the Talmud gave this judicial admonition to a witness:

“Perhaps ye saw him running after his fellow into a ruin, ye pursued him and found him sword in hand with blood dripping from it, whilst the murdered man was writhing [in agony]: if this is what ye saw, ye saw nothing.”

The court would even reject the evidence of eye witnesses to the act of murder if their testimony differed on an essential point. If, for example, one said the weapon was a sword and the other a dagger, the discrepancy

invalidated their evidence. The accused was presumed innocent until the proof of his guilt was demonstrated as a certainty by evidence that was exact, consistent in all important respects, and beyond any doubt. LWL

APPLICABLE VERSES FROM THE MOSAIC LAW

We see in the following verses that there were to be appointed judges, authorities in every town. People were not to appoint themselves “judge and jury,” as a “lynch mob,” or “vigilantes” of the libertine mentality. Justice was not to be distorted!

Deut. 16:18-20 *“You shall appoint for yourself **judges and officers** in all your towns which the LORD your God is giving you, according to your tribes, and **they shall judge the people with righteous judgment**. **“You shall not distort justice**; you shall not be partial, and you shall not take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous. **“Justice, and only justice, you shall pursue**, that you may live and possess the land which the LORD your God is giving you.”*

THE JUDGES “SHALL INQUIRE THOROUGHLY”

Deut. 17:2,4a *“If there is found in your midst, in any of your towns, which the LORD your God is giving you, a man or a woman who does what is evil in the sight of the LORD your God, by transgressing His covenant, and if it is told you and you have heard of it, then you [the judges] shall **inquire thoroughly**....”*

EVIDENCE MUST COME FROM OTHER WITNESSES -- NOT FROM THE ACCUSED

Deut. 17:6-7. *“On the evidence of two witnesses or three witnesses [against him], he who is to die shall be put to death; he shall not be put to death on the evidence of one witness. The hand of the witnesses shall be first against him to put him to death, and afterward the hand of all the people. So you shall purge the evil from your midst.”*

HIGHER COURT:

Deut. 17:8-9 *“If any case is too difficult for you to decide, between one kind of homicide or another, between one kind of lawsuit or another, and between one kind of assault or another, being cases of dispute in your courts, then you shall arise and go up to the place which the LORD your God chooses. “So you shall come to the Levitical priest or the judge who is in office in those days, and you shall inquire of them and they will declare to you the verdict in the case.”*”

THE JUDGMENT OF THE AUTHORITIES WAS NOT TO BE DISPUTED

Deut. 17:10-11 *“You shall do according to the terms of the verdict which they declare to you from that place which the LORD chooses; and you shall be careful to observe according to all that they teach you. According to the terms of the law which they teach you, and according to the verdict which they tell you, you shall do; you shall not turn aside from the word which they declare to you, to the right or the left.”*

DEATH PENALTY FOR DISOBEYING AUTHORITY

Deut. 17:12-13 *“The man who acts presumptuously by not listening to the priest who stands there to serve the LORD your God, nor to the judge, that man shall die; thus you shall purge the evil from Israel. Then all the people will hear and be afraid, and will not act presumptuously again.”*

THE MAN IS NOT A WITNESS AGAINST HIMSELF

Deut. 19:15 *“A single witness shall not rise up against a man on account of any iniquity or any sin which he has committed; on the evidence of two or three witnesses [against the accused] a matter shall be confirmed.”*

FALSE WITNESSES

Deut. 19:16-20 *“If a malicious witness rises up against a man to accuse him of wrongdoing, then both the men who have the dispute shall stand before the LORD, before the priests and the judges who will be in office in those days. **“The judges shall investigate thoroughly, and if the witness is a false witness and he has accused his brother falsely, then you shall do to him just as he had intended to do to his brother. Thus you shall purge the evil from among you. “The rest will hear and be afraid, and will never again do such an evil thing among you.”**”*

JESUS PUTS THESE PRECEPTS INTO PRACTICE

John 8:1-11.... *Early in the morning He came again into **the temple**, and all the people were coming to Him; and He sat down and began to teach them.*

Here we see Jesus teaching in the “temple,” and many people are gathered there.

*The scribes and the Pharisees brought a woman **caught in adultery**, and having set her **in the center of the court**, they said to Him, “Teacher, this woman has been **caught in adultery, in the very act.**”*

There is no reason to believe that they are lying, since the woman is not protesting or claiming her innocence.

*“Now in **the Law Moses** commanded us to stone such women; what then do You say?” They were saying this, **testing Him**, so that they might have grounds for accusing Him.*

They were absolutely correct about that portion of the Law that they quote. They were “testing” Jesus to see if He respected and would support and obey the Law of the Old Testament given by God. Jesus absolutely supported the Law, but as we will see, He will insist on all of the laws being followed, and will, by adding information to the situation (“writing on the ground”), disperse this arrogant libertine lynch mob.

But Jesus stooped down and with His finger wrote on the ground.

Notice that His first response is not to ask the woman, “Are you guilty?” She does not have to be a witness against herself. His first response is to write something on the ground. Obviously, we do not know what Jesus wrote, but recalling the verses we have previously read, and if the Old Testament Law is to be followed, there are certainly some things missing in this situation. If she was “caught in the very act,” where are the eyewitnesses and the other man or men? We saw earlier that the Law demands that **“you shall not distort justice,”** and **“you shall inquire thoroughly”** of the eyewitnesses that the Pharisees insinuated that they had. The Pharisees wanted to “lynch” her; Jesus wanted proper procedures to be followed, ACCORDING TO THE LAW!

But when they persisted in asking Him, He straightened up, and said to them, “He who is without sin among you, let him be the first to throw a stone at her.”

Whatever Jesus wrote on the ground the first time, possibly **“witnesses”** or **“examine thoroughly”** did not seem to affect the Pharisees yet. So Jesus makes the application by the statement, **“He who is without sin among you, let him be the first to throw a stone...”** Jesus is pointing out that perversion and violation of the laws of justice are just as bad, or worse than adultery, and that these Pharisees are in as much sin as the woman they accuse.

Again He stooped down and wrote on the ground.

This time when Jesus writes, He probably writes the name of the man who was involved in this situation, and perhaps other men there that had been with this woman. Whatever He wrote, the impact on these men was so convicting that it stopped all words.

When they heard it, they began to go out one by one, beginning with the older ones, and He was left alone, and the woman, where she was, in the center of the court.

The Pharisees quietly leave, understanding their guilt. They realize that pressing Jesus, who also knew the law (much better than they), would bring to light the very fact that it was not

“justice” that they were really interested in, but furthering their own agenda in the guise of “righteousness.”

*Straightening up, Jesus said to her, “**Woman, where are they? Did no one condemn you?**”*

Until this time Jesus has never asked this woman if she was indeed guilty; nor does He ask her now. He continues to follow the proper judicial procedures of the Law. Does this mean that this guilty adulteress goes free? Before men – yes; before God – no! Had these men followed proper judicial procedure, Jesus would have certainly condoned her stoning. Their guilt was actually worse than hers.

*She said, “No one, Lord.” And Jesus said, “**I do not condemn you, either. Go. From now on sin no more.**”*

The Pharisees walked out of this situation “condemned.” The adulteress walked out of this situation “**not condemned,**” but with the admonition to stop her sinful behavior. Some Christians wrongly interpret this portion of Scripture as Jesus condoning sin in all areas, without judging it. Jesus does deal with the woman’s sin before she leaves, but without dragging a confession out of her. The point of this portion of Scripture is that the perversion and the neglect of justice is the greater sin, since it is, according to Jesus, one of the “**weightier provisions of the law.**”

Matthew 23:23 “Woe to you, scribes and Pharisees, hypocrites! For you tithe mint and dill and cummin, and **have neglected the weightier provisions of the law: justice and mercy and faithfulness;** but these are the things you should have done without neglecting the others.”

OLD TESTAMENT LAWS IN THE NEW TESTAMENT

In the New Testament our Lord Jesus lays the foundational verses for all sin problems that will confront “His church,” whether they are doctrinal, moral, or civil. The three steps in these verses, Matt. 18:15-17, are an obvious summary of the previous Old Testament

laws, and will be found in the “Church Discipline” section of the Constitution or Statement of Faith in any Christian church even remotely “fundamental.” Some that would claim to be fundamental “Bible” churches have not even “one” Bible verse under their “Church Discipline” heading! Others try to limit these verses as only applying to a brother who “sins against you,” as the KJV reads. Shouldn’t a godly Christian, seeing or hearing his brother sin, love that brother enough to want to faithfully correct him? Has he no obligation whatsoever to that brother as long as the sin was not “against” him? A Christian is not only responsible to confront sin, but to confront it in the proper Biblical procedure. Teaching contrary to this is irresponsible, arrogant, and selfish, besides being bad doctrine. It is this same “not responsible” mindset that causes the moral and doctrinal decay in so many of the churches of today.

Step one

Matthew 18:15 *“If your brother **sins** [against you or not], **go and show him his fault in private**; if he listens to you, you have won your brother.”*

In this verse any and all “sins” are the topic. The person being confronted must clearly understand the “sin” he is being accused of (“show him his fault”), and the matter is to be kept “private” if it can be resolved. The purpose is to “win your brother” over from “sin.” To gossip about the situation would be sin.

Step two

16 *“But if **he does not listen to you**, take one or two more with you, so that **BY THE MOUTH OF TWO OR THREE WITNESSES EVERY FACT MAY BE CONFIRMED.**”*

In this step, witnesses are brought in to establish facts. Notice, as in the Old Testament Law, the person confronted is not one of the witnesses. If “he listens,” and the “sin” can be resolved, it is again to be kept “private,” and not gossiped about, Prov. 11:12-13; 12:16; 17:9; 20:19; 25:9-10. (Step one can be skipped if the “sin” has already been eye-witnessed by two or more saints, as in Gal. 2:14 where Paul questions Peter’s behavior “in the presence of all” the witnesses.)

Step three

17 *“If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector.”*

When the accused person refuses to take the counsel of the confronting brother and his two witnesses, the situation is to be brought before the local assembly of believers—the church—in a court situation, as in the Old Testament Law, with the elders of the church being the judges. The elders are to decide the case, and the decision is to be accepted, I Tim. 3:5; 5:17; Heb. 13:17. If there is no “sin,” or the accused “listens,” the case is resolved.

CHURCH SEPARATION

If there is a “sin” problem, and it is not resolved, the accused is to be “rebuked” and put out of the church and “separation” rules are invoked. Separation is not to be done unless Matt. 18:17 has been carried out. Those that “separate” without following the Biblical process of justice are in sin themselves because of their libertine lynch-mob behavior. Other separation verses such as Rom. 16:17; II Thes. 2:15, 3:6, 14-15; (I Tim. 6:3-5 NKJV); II Tim. 3:5; Titus 3:9-11; are with the understanding that the loving and just process of searching out the problem as recorded in Matt. 18:17 and also Gal. 6:1 has been followed. (In the early church, the apostles could impose even the death penalty on believers who continued in sin, as in Acts 5:1-12, or overrule a carnal church that did not handle sin in the church properly, as in I Cor. 5:1-5. Obviously, these are apostolic exceptions to the rules.)

Christians who will not submit to, or carry out, these proper judicial procedures in this life “wrong and defraud their brethren,” and certainly will not rule and reign with Christ in the millennium, as we see in the following verses:

1 Cor. 6:1-8 *“Does any one of you, when he has a case against his neighbor, dare to go to law before the unrighteous and not before the saints? Or **do you not know that the saints will judge the world?** If the world is judged by you, are you not competent to*

*constitute the smallest law courts? **Do you not know that we will judge angels? How much more matters of this life?** So if you have law courts dealing with matters of this life, do you appoint them as judges who are of no account in the church? **I say this to your shame. Is it so, that there is not among you one wise man who will be able to decide between his brethren, but brother goes to law with brother, and that before unbelievers?** Actually, then, it is already a defeat for you, that you have lawsuits with one another. Why not rather be wronged? Why not rather be defrauded? On the contrary, **you yourselves wrong and defraud. You do this even to your brethren.** **Or do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived; ...**”*

Some would assert that the above verses only apply to “civil lawsuits,” as if the church’s involvement in settling “civil lawsuits” would prepare them for ruling and reigning the “world” and “angels” in the millennial kingdom. Perhaps they think we will have to settle “civil lawsuits” between “angels.” Revelation 2:26-27 states:

“He who overcomes, and he who keeps My deeds until the end, TO HIM I WILL GIVE AUTHORITY OVER THE NATIONS; AND HE SHALL RULE THEM WITH A ROD OF IRON, AS THE VESSELS OF THE POTTER ARE BROKEN TO PIECES, as I also have received authority from My Father;”

“Authority over the nations?” “Rule them with a rod of iron?” This surely sounds like much more than “civil lawsuits,” doesn’t it? The following verses show clearly that God’s apostle Paul understood Biblical justice correctly and recorded that for us. (He even demanded it from the Romans):

*Acts 16:37 But Paul said to them, “**They have beaten us in public without trial, men who are Romans, and have thrown us into prison; and now are they sending us away secretly? No indeed! But let them come themselves and bring us out.**”*

*Acts 22:25 But when they stretched him out with thongs, Paul said to the centurion who was standing by, “**Is it lawful for you to scourge a man who is a Roman and uncondemned?**”*

2 Cor. 13:1 *This is the third time I am coming to you. **EVERY FACT IS TO BE CONFIRMED BY THE TESTIMONY OF TWO OR THREE WITNESSES.***

1 Tim. 5:19-20 ***Do not receive an accusation against an elder except on the basis of two or three witnesses. Those who continue in sin, rebuke in the presence of all, so that the rest also will be fearful of sinning.*** (If sin continues, he is removed per Matt. 18:17)

We have seen in the Bible that God's plan is for everyone (even an elder) to receive a fair and impartial trial according to the laws. This was true in the Old Testament and in the New Testament. We can thank God and America's founding fathers that we have a Biblical foundation for our system of justice in this great nation that God has so abundantly blessed.

YOU SHALL NOT DISTORT JUSTICE

Deut. 16:19-20a ***"You shall not distort justice; you shall not be partial, and you shall not take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous. Justice, and only justice, you shall pursue,..."***

Matthew 23:23 ***"Woe to you, scribes and Pharisees, hypocrites! For you tithe mint and dill and cummin, and have neglected the weightier provisions of the law: justice and mercy and faithfulness; but these are the things you should have done without neglecting the others."***

Zech. 7:9,11 ***"Thus has the LORD of hosts said, 'Dispense true justice and practice kindness and compassion each to his brother; But they refused to pay attention and turned a stubborn shoulder and stopped their ears from hearing.'***

Micah 6:8 **He has told you, O man, what is good; And what does the LORD require of you but to do justice, to love kindness, and to walk humbly with your God?**

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