

## QUESTION 104

### The Judicial Precepts of the Old Law

Next we have to consider the judicial precepts. First we have to consider them in general and, second, we have to consider the reasons for them.

On the first topic there are four questions: (1) What are the judicial precepts? (2) Are the judicial precepts figurative? (3) How long do they endure? (4) What are the kinds of judicial precepts?

#### Article 1

##### Does the nature of the judicial precepts consist in their directing a man in his relations with his neighbor?

It seems that the nature of the judicial precepts does not consist in their directing a man in his relations with his neighbor (*ordinantia ad proximum*):

**Objection 1:** The judicial precepts (*praecepta iudicialia*) take their name from judicial proceedings (*iudicium*). But there are many other things by which a man is directed in his relations with his neighbor and which do not involve any judicial proceeding. Therefore, it is not the case that these precepts are called judicial because they direct a man in his relations with his neighbor.

**Objection 2:** As was explained above (q. 99, a. 4), the judicial precepts are distinct from the moral precepts. But there are many moral precepts by which a man is directed in his relations with his neighbor, as is clear from the seven precepts of the second tablet. Therefore, it is not the case that precepts are called judicial by reason of the fact that they direct a man in his relations with his neighbor.

**Objection 3:** As was explained above (q. 99, a. 4 and q. 101, a. 1), the judicial precepts bear upon our neighbor in the same way that the ceremonial precepts bear upon God. But among the ceremonial precepts there are some that have to do with one's own self, e.g., the observances regarding food and clothing that were discussed above (q. 102, a. 6). Therefore, it is not the case that precepts are called judicial by virtue of the fact that they direct a man in his relations with his neighbor.

**But contrary to this:** Ezekiel 18:8 lists among the good works of the just man: "... if he judges accurately (*iudicium fecerit verum*) between one man and another." But the judicial precepts take their name from judicial proceedings (*iudicium*). Therefore, it seems that the precepts that are called judicial are those that involve directing men in their relations with one another.

**I respond:** As is clear from what was said above (q. 99, a. 4), certain precepts of the Law have their binding force (*vis obligandi*) from the very dictate of reason—i.e., in virtue of the fact that natural reason dictates that such-and-such is to be done or is to be avoided. Precepts of this sort are called *moral* precepts, because human morals (*mores humani*) come from reason.

By contrast, other precepts do not have their binding force from the very dictate of reason; for, considered in themselves, they do not absolutely speaking have the character of what ought to be done or ought not to be done. Instead, they have their binding force from some statute, either divine or human (*ex aliqua institutione divina vel humana*). Certain specifications (*determinationes*) of the moral precepts are of this sort. Thus, if the moral precepts are given a specification by divine statute in those matters in which man is ordered toward God, then the resulting precepts are called *ceremonial* precepts. On the other hand, if the moral precepts are given a specification in matters that involve the ordering of men to one another, then the resulting precepts are called *judicial* precepts.

Therefore, the nature of the judicial precepts consists in two things, viz., (a) the fact that they have to do with directing men in their relations with one another, and (b) the fact that they have binding force not just from reason, but from statutes.

**Reply to objection 1:** Judicial proceedings are conducted as the official duty of certain rulers (*principes*) who have the power to pass judgment. Now a ruler has the role of bringing order not only to what comes under litigation, but also to the voluntary contracts made among men and to everything that involves the communal life and governance of the people. Hence, the judicial precepts include not only those matters that involve disputes requiring judicial proceedings but also any matter that involves the ordering of men to one another and that is subject to the determination of the ruler as the supreme judge.

**Reply to objection 2:** This argument goes through in the case of those precepts that direct a man in his relations with his neighbor and that have their binding force solely from the dictate of reason.

**Reply to objection 3:** It is likewise the case that among the precepts that direct one toward God, some are moral, i.e., are dictated by reason itself as informed by faith—e.g., that God is to be loved and worshiped—whereas others are ceremonial, i.e., they have binding force only by divine ordinance.

Now what pertains to God are not just the sacrifices offered to God, but also anything relevant to one's fitness for making offerings and for worshiping God. For men are directed toward God as their end, and so it is relevant to the worship of God, and thus to the ceremonial precepts, that a man should have a certain sort of fitness (*idoneitas*) with respect to divine worship.

By contrast, a man is not directed to his neighbor as his end in such a way that he must be, within his very self, at the disposal of his neighbor (*ut oporteat eum disponi in seipso in ordine ad proximum*). For this is the way in which servants are related to their masters—where, according to the Philosopher in *Politics* 1, “servants, in all that they are, belong to their masters.” And so there are no judicial precepts that direct a man within himself; instead, all precepts of that sort are moral. For reason, which is the principle of the moral precepts, plays the same role within a man—i.e., with respect to the things pertaining to his very self—that a ruler or judge plays within a city.

Still, note that because the relation of a man to his neighbor falls [directly] under reason to a greater degree than does the relation of a man to God, there are more moral precepts by which a man is directed in his relations with his neighbor than there are moral precepts by which he is directed toward God. It is for this reason, too, that in the Law there are more ceremonial precepts than there are judicial precepts.

## Article 2

### Are the judicial precepts figures of anything?

It seems that the judicial precepts are not figures of anything:

**Objection 1:** It seems proper to the ceremonial precepts to be instituted as a figure of something. Therefore, if the judicial precepts were likewise figures of something, then there would be no difference between the judicial precepts and the ceremonial precepts.

**Objection 2:** Just as the Jewish people were given certain judicial precepts, so other peoples among the Gentiles were given judicial precepts, too. However, the judicial precepts of those other peoples were not figures of anything, but instead laid down what ought to be done. Therefore, the judicial precepts of the Old Law do not seem to have been figures of anything, either.

**Objection 3:** What pertains to the worship of God had to be handed down by means of figures, since, as was explained above (q. 101, a. 2), the things of God exceed our reason. By contrast, what has to do with our neighbor does not exceed our reason. Therefore, it is unnecessary for the judicial precepts, which direct us in our relations with our neighbor, to be figures of anything.

**But contrary to this:** In Exodus 21 the precepts are explained by means of both an allegorical sense and a moral sense (*allegorice et moraliter*).

**I respond:** There are two ways in which a precept can be a figure of something:

In the first way, a precept is a figure primarily and *per se*, i.e., it is instituted mainly in order to be a figure of something. This is the way in which the ceremonial precepts are figurative, since they were instituted in order to be figures of things having to do with the worship of God and the mystery of Christ.

On the other hand, certain precepts are figurative not primarily and *per se*, but in a derivative way (*in consequenti*). This is the way in which the judicial precepts of the Old Law are figurative. For they were instituted not for the purpose of being figures of anything, but rather for the purpose of regulating the condition (*status*) of the Jewish people in accordance with justice and equity. However, the judicial precepts were figures of something in a derivative way, viz., insofar as the overall condition (*totus status*) of the people who were disposed by these precepts was itself figurative—this according to 1 Corinthians 10:11 (“All things happened to them in figure”).

**Reply to objection 1:** As has been explained, the ceremonial precepts were figurative in a way different from that in which the judicial precepts were figurative.

**Reply to objection 2:** The Jewish people had been chosen by God in order that the Christ should be born from them. And so, as Augustine puts it in *Contra Faustum*, the overall condition of that people had to be prophetic and figurative. Because of this, it was also the case that the judicial precepts given to that people were figurative to a greater degree than the judicial precepts given to other peoples. For instance, that people’s wars and deeds are given a mystical interpretation, unlike the wars and deeds of the Assyrians and the Romans—even though the latter are far more famous among men.

**Reply to objection 3:** If, within that people, the directing of a man in his relations with his neighbor is considered merely by itself, then it is accessible to reason (*pervius rationi*). However, it surpassed reason insofar as it was ordered toward the worship of God. And it is on this score that it was figurative.

### Article 3

#### Do the judicial precepts of the Old Law have perpetual binding force?

It seems that the judicial precepts of the Old Law have perpetual binding force (*perpetuam obligationem habeant*):

**Objection 1:** The judicial precepts (*praecepta iudicialia*) have to do with the virtue of justice, since a legal judgment (*iudicium*) is an execution of justice. But as Wisdom 1:15 says, justice is “everlasting and undying (*perpetua et immortalis*).” Therefore, the binding force of the judicial precepts is perpetual.

**Objection 2:** A divine statute (*institutio divina*) is more stable than a human statute. But the judicial precepts of the codes of human law have perpetual binding force. Therefore, *a fortiori*, so do the judicial precepts of divine law.

**Objection 3:** In Hebrews 7:18 the Apostle says, “The previous Law (*mandatum*) was set aside because of its weakness and unprofitableness.” This is true of the ceremonial Law, which, as the Apostle says in Hebrews 9:9-10, “could not make one perfect in conscience except only with respect to food and drink and various types of ritual washing and rules governing the flesh.” By contrast, the judicial precepts were useful and effective for the purpose to which they were ordered, viz., to establish justice and equity among men. Therefore, the judicial precepts of the Old Law were not set aside, but still have force.

**But contrary to this:** In Hebrews 7:12 the Apostle says, “Once the priesthood is transferred

(*translatum*), the Law must be transferred as well.” But the priesthood is transferred from Aaron to Christ. Therefore, the whole of the Law is transferred. Therefore, it is not the case that the judicial precepts still have binding force.

**I respond:** The judicial precepts did not have perpetual binding force, but were set aside with the coming of Christ—though in manner different from that in which the ceremonial precepts were set aside.

For the ceremonial precepts were set aside in such a way that they are not only dead but also deadly for those observing them after Christ, especially after the spread of the Gospel. By contrast, the judicial precepts are, to be sure, dead, since they do not have binding force, and yet they are not deadly. For if a ruler were to command that these judicial precepts should be observed in his domain, he would not thereby sin—unless, perhaps, the precepts were observed or were to be observed as if they had their binding force from the institution of the Old Law. For this sort of intention in observing them would be deadly.

The explanation for this difference between the ceremonial precepts and the judicial precepts can be gathered from what was said above (a. 2). For it was claimed that the ceremonial precepts are figurative primarily and *per se*, in the sense that they were instituted primarily to be figures of the mysteries of the Christ understood as something future. And so to observe them now is prejudicial to the truth of the Faith, since we now confess that these mysteries have been accomplished. By contrast, the judicial precepts were instituted not in order to be figures, but in order to mold the state of the people that was ordered toward the Christ. And so when the status of that people changed because Christ had already come, the judicial precepts lost their binding force; for as Galatians 3:24 says, the Law was a teacher leading them to the Christ.

Still, since the judicial precepts are ordered not toward being figures of anything, but rather toward something’s being done, the observance of those precepts is not itself, absolutely speaking, prejudicial to the truth of the Faith. However, the intention to observe the judicial precepts because of the binding power of the Law is indeed prejudicial to the truth of the Faith. For it implies that the former people’s state still persists and that the Christ has not yet come.

**Reply to objection 1:** To be sure, justice must always be observed. But the specification of what is just by human or divine decree must vary with the different states of men.

**Reply to objection 2:** The judicial precepts instituted by men have perpetual binding force as long as the relevant state of the regime persists. But if a city or nation devolves into another regime, then the laws must change. For instance, as is clear from the Philosopher in his *Politics*, it is not the case that the same laws are appropriate for both a democracy, which is rule by the people (*potestas populi*), and an oligarchy, which is rule by the rich (*potestas divitum*). So, too, once the status of the people in question changed, the judicial precepts had to change.

**Reply to objection 3:** The judicial precepts disposed the people toward justice and equity in a way appropriate for their status. But after Christ, the status of that people had to change, since now in Christ there would be no distinction between Gentile and Jew, as there had been before. For this reason, the judicial precepts also had to change.

#### Article 4

##### Can the judicial precepts be divided into set kinds?

It seems that the judicial precepts cannot be divided into set kinds:

**Objection 1:** The judicial precepts direct men in their relations with one another. But the things

that need to be directed among men and are part of human practice do not fall under set kinds, since there are infinitely many of them. Therefore, the judicial precepts cannot have set kinds.

**Objection 2:** The judicial precepts are specifications of the moral precepts. But the moral precepts do not seem to admit of set kinds, except insofar as they are traced back to the precepts of the Decalogue. Therefore, the judicial precepts do not have set kinds.

**Objection 3:** Since the ceremonial precepts have set kinds, their division is based on the Law, as when some are called sacrifices and some are called observances. But there is no division of the judicial precepts that is based on the Law. Therefore, it seems that the judicial precepts do not have set kinds.

**But contrary to this:** Where there is order, there must be distinctions. But the notion of order is especially relevant to the judicial precepts, through which the people in question were ordered. Therefore, the judicial precepts ought especially to have set kinds.

**I respond:** Since law is, as it were, the craft (*ars*) of instituting or ordering human life, it follows that just as in any craft there is a set distinction among the rules of the craft, so too in any law there must be a set division of the precepts; otherwise, confusion would by itself destroy the law's usefulness. Accordingly, one should claim that the judicial precepts of the Old Law, through which men were ordered in their relations with one another, have divisions corresponding to the divisions of human ordering.

Now within a given people there are four orderings: (a) the ordering of the rulers of the people to their subjects, (b) the ordering of the subjects to one another, (c) the ordering of the people themselves to outsiders (*ad extraneos*), and (d) the ordering of domestic relations, e.g., father to son, wife to husband, master to servant. It is according to these four orderings that the judicial precepts of the Old Law can be divided:

(a) Some precepts are given that have to do with the institution of the rulers and their duties, and with the respect that ought to be shown for them; and this is one part of the judicial precepts.

(b) Again, some precepts are given that have to do with the citizens' relations with one another, e.g., precepts concerning buying and selling, and precepts concerning judgments and penalties. And this is the second part of the judicial precepts.

(c) Again, some precepts are given that have to do with outsiders, e.g., precepts concerning wars against enemies and precepts concerning the manner in which travelers and strangers are to be received. And this is the third part of the judicial precepts.

(d) Again, in the Law some precepts are given that have to do with domestic common life, e.g., precepts concerning servants and wives and children. And this is the fourth part of the judicial precepts.

**Reply to objection 1:** The things that have to do with the ordering of men to one another are, to be sure, infinitely many. However, as has been explained, they can still be reduced to certain set kinds of things according to the differences among human relations.

**Reply to objection 2:** As was explained above (q. 100, a. 3), the precepts of the Decalogue are first in the genus of morals, and so the other moral precepts are appropriately divided by reference to them. By contrast, the judicial and ceremonial precepts have a different sort of binding force that comes not from natural reason but solely by decree. And so their divisions have a different explanation.

**Reply to objection 3:** The Law bases the division of the judicial precepts on the very things that are ordered by the judicial precepts in the Law.