

Objection 1. It would seem that the judicial precepts were not suitably framed as regards the relations of one man with another. Because men cannot live together in peace, if one man takes what belongs to another. But this seems to have been approved by the Law: since it is written (Dt. 23:24): “Going into thy neighbor’s vineyard, thou mayest eat as many grapes as thou pleasest.” Therefore the Old Law did not make suitable provisions for man’s peace.

Objection 2. Further, one of the chief causes of the downfall of states has been the holding of property by women, as the Philosopher says (Polit. ii, 6). But this was introduced by the Old Law; for it is written (Num. 27:8): “When a man dieth without a son, his inheritance shall pass to his daughter.” Therefore the Law made unsuitable provision for the welfare of the people.

Objection 3. Further, it is most conducive to the preservation of human society that men may provide themselves with necessaries by buying and selling, as stated in Polit. i. But the Old Law took away the force of sales; since it prescribes that in the 50th year of the jubilee all that is sold shall return to the vendor (Lev. 25:28). Therefore in this matter the Law gave the people an unfitting command.

Objection 4. Further, man’s needs require that men should be ready to lend: which readiness ceases if the creditors do not return the pledges: hence it is written (Ecclus. 29:10): “Many have refused to lend, not out of wickedness, but they were afraid to be defrauded without cause.” And yet this was encouraged by the Law. First, because it prescribed (Dt. 15:2): “He to whom any thing is owing from his friend or neighbor or brother, cannot demand it again, because it is the year of remission of the Lord”; and (Ex. 22:15) it is stated that if a borrowed animal should die while the owner is present, the borrower is not bound to make restitution. Secondly, because the security acquired through the pledge is lost: for it is written (Dt. 24:10): “When thou shalt demand of thy neighbor any thing that he oweth thee, thou shalt not go into his house to take away a pledge”; and again (Dt. 24:12,13): “The pledge shall not lodge with thee that night, but thou shalt restore it to him presently.” Therefore the Law made insufficient provision in the matter of loans.

Objection 5. Further, considerable risk attaches to goods deposited with a fraudulent depositary: wherefore great caution should be observed in such matters: hence it is stated in 2 Mac. 3:15 that “the priests. . . called upon Him from heaven, Who made the law concerning things given to be kept, that He would preserve them safe, for them that had deposited them.” But the precepts of the Old Law observed little caution in regard to deposits: since it is prescribed (Ex. 22:10,11) that when goods deposited are lost, the owner is to stand by the oath of the depositary. Therefore the

Law made unsuitable provision in this matter.

Objection 6. Further, just as a workman offers his work for hire, so do men let houses and so forth. But there is no need for the tenant to pay his rent as soon as he takes a house. Therefore it seems an unnecessarily hard prescription (Lev. 19:13) that “the wages of him that hath been hired by thee shall not abide with thee until morning.”

Objection 7. Further, since there is often pressing need for a judge, it should be easy to gain access to one. It was therefore unfitting that the Law (Dt. 17:8,9) should command them to go to a fixed place to ask for judgment on doubtful matters.

Objection 8. Further, it is possible that not only two, but three or more, should agree to tell a lie. Therefore it is unreasonably stated (Dt. 19:15) that “in the mouth of two or three witnesses every word shall stand.”

Objection 9. Further, punishment should be fixed according to the gravity of the fault: for which reason also it is written (Dt. 25:2): “According to the measure of the sin, shall the measure also of the stripes be.” Yet the Law fixed unequal punishments for certain faults: for it is written (Ex. 22:1) that the thief “shall restore five oxen for one ox, and four sheep for one sheep.” Moreover, certain slight offenses are severely punished: thus (Num. 15:32, seqq.) a man is stoned for gathering sticks on the sabbath day: and (Dt. 21:18, seqq.) the unruly son is commanded to be stoned on account of certain small transgressions, viz. because “he gave himself to revelling. . . and banquetings.” Therefore the Law prescribed punishments in an unreasonable manner.

Objection 10. Further, as Augustine says (De Civ. Dei xxi, 11), “Tully writes that the laws recognize eight forms of punishment, indemnity, prison, stripes, retaliation, public disgrace, exile, death, slavery.” Now some of these were prescribed by the Law. “Indemnity,” as when a thief was condemned to make restitution fivefold or fourfold. “Prison,” as when (Num. 15:34) a certain man is ordered to be imprisoned. “Stripes”; thus (Dt. 25:2), “if they see that the offender be worthy of stripes; they shall lay him down, and shall cause him to be beaten before them.” “Public disgrace” was brought on to him who refused to take to himself the wife of his deceased brother, for she took “off his shoe from his foot, and” did “spit in his face” (Dt. 25:9). It prescribed the “death” penalty, as is clear from (Lev. 20:9): “He that curseth his father, or mother, dying let him die.” The Law also recognized the “lex talionis,” by prescribing (Ex. 21:24): “Eye for eye, tooth for tooth.” Therefore it seems unreasonable that the Law should not have inflicted the two other punishments, viz. “exile” and “slavery.”

Objection 11. Further, no punishment is due except for a fault. But dumb animals cannot commit a fault.

Therefore the Law is unreasonable in punishing them (Ex. 21:29): “If the ox... shall kill a man or a woman,” it “shall be stoned”: and (Lev. 20:16): “The woman that shall lie under any beast, shall be killed together with the same.” Therefore it seems that matters pertaining to the relations of one man with another were unsuitably regulated by the Law.

Objection 12. Further, the Lord commanded (Ex. 21:12) a murderer to be punished with death. But the death of a dumb animal is reckoned of much less account than the slaying of a man. Hence murder cannot be sufficiently punished by the slaying of a dumb animal. Therefore it is unfittingly prescribed (Dt. 21:1,4) that “when there shall be found... the corpse of a man slain, and it is not known who is guilty of the murder... the ancients” of the nearest city “shall take a heifer of the herd, that hath not drawn in the yoke, nor ploughed the ground, and they shall bring her into a rough and stony valley, that never was ploughed, nor sown; and there they shall strike off the head of the heifer.”

On the contrary, It is recalled as a special blessing (Ps. 147:20) that “He hath not done in like manner to every nation; and His judgments He hath not made manifest to them.”

I answer that, As Augustine says (De Civ. Dei ii, 21), quoting Tully, “a nation is a body of men united together by consent to the law and by community of welfare.” Consequently it is of the essence of a nation that the mutual relations of the citizens be ordered by just laws. Now the relations of one man with another are twofold: some are effected under the guidance of those in authority: others are effected by the will of private individuals. And since whatever is subject to the power of an individual can be disposed of according to his will, hence it is that the decision of matters between one man and another, and the punishment of evildoers, depend on the direction of those in authority, to whom men are subject. On the other hand, the power of private persons is exercised over the things they possess: and consequently their dealings with one another, as regards such things, depend on their own will, for instance in buying, selling, giving, and so forth. Now the Law provided sufficiently in respect of each of these relations between one man and another. For it established judges, as is clearly indicated in Dt. 16:18: “Thou shalt appoint judges and magistrates in all its [Vulg.: ‘thy’] gates... that they may judge the people with just judgment.” It is also directed the manner of pronouncing just judgments, according to Dt. 1:16,17: “Judge that which is just, whether he be one of your own country or a stranger: there shall be no difference of persons.” It also removed an occasion of pronouncing unjust judgment, by forbidding judges to accept bribes (Ex. 23:8; Dt. 16:19). It prescribed the number of witnesses, viz. two or three: and it appointed certain punishments to certain crimes, as we shall state farther on (ad 10).

But with regard to possessions, it is a very good

thing, says the Philosopher (Polit. ii, 2) that the things possessed should be distinct, and the use thereof should be partly common, and partly granted to others by the will of the possessors. These three points were provided for by the Law. Because, in the first place, the possessions themselves were divided among individuals: for it is written (Num. 33:53,54): “I have given you” the land “for a possession: and you shall divide it among you by lot.” And since many states have been ruined through want of regulations in the matter of possessions, as the Philosopher observes (Polit. ii, 6); therefore the Law provided a threefold remedy against the regularity of possessions. The first was that they should be divided equally, wherefore it is written (Num. 33:54): “To the more you shall give a larger part, and to the fewer, a lesser.” A second remedy was that possessions could not be alienated for ever, but after a certain lapse of time should return to their former owner, so as to avoid confusion of possessions (cf. ad 3). The third remedy aimed at the removal of this confusion, and provided that the dead should be succeeded by their next of kin: in the first place, the son; secondly, the daughter; thirdly, the brother; fourthly, the father’s brother; fifthly, any other next of kin. Furthermore, in order to preserve the distinction of property, the Law enacted that heiresses should marry within their own tribe, as recorded in Num. 36:6.

Secondly, the Law commanded that, in some respects, the use of things should belong to all in common. Firstly, as regards the care of them; for it was prescribed (Dt. 22:1-4): “Thou shalt not pass by, if thou seest thy brother’s ox or his sheep go astray; but thou shalt bring them back to thy brother;” and in like manner as to other things. Secondly, as regards fruits. For all alike were allowed on entering a friend’s vineyard to eat of the fruit, but not to take any away. And, specially, with respect to the poor, it was prescribed that the forgotten sheaves, and the bunches of grapes and fruit, should be left behind for them (Lev. 19:9; Dt. 24:19). Moreover, whatever grew in the seventh year was common property, as stated in Ex. 23:11 and Lev. 25:4.

Thirdly, the law recognized the transference of goods by the owner. There was a purely gratuitous transfer: thus it is written (Dt. 14:28,29): “The third day thou shalt separate another tithe... and the Levite... and the stranger, and the fatherless, and the widow... shall come and shall eat and be filled.” And there was a transfer for a consideration, for instance, by selling and buying, by letting out and hiring, by loan and also by deposit, concerning all of which we find that the Law made ample provision. Consequently it is clear that the Old Law provided sufficiently concerning the mutual relations of one man with another.

Reply to Objection 1. As the Apostle says (Rom. 13:8), “he that loveth his neighbor hath fulfilled the Law”: because, to wit, all the precepts of the Law, chiefly those concerning our neighbor, seem to aim at the end that men should love one another. Now it is an

effect of love that men give their own goods to others: because, as stated in 1 Jn. 3:17: "He that... shall see his brother in need, and shall shut up his bowels from him: how doth the charity of God abide in him?" Hence the purpose of the Law was to accustom men to give of their own to others readily: thus the Apostle (1 Tim. 6:18) commands the rich "to give easily and to communicate to others." Now a man does not give easily to others if he will not suffer another man to take some little thing from him without any great injury to him. And so the Law laid down that it should be lawful for a man, on entering his neighbor's vineyard, to eat of the fruit there: but not to carry any away, lest this should lead to the infliction of a grievous harm, and cause a disturbance of the peace: for among well-behaved people, the taking of a little does not disturb the peace; in fact, it rather strengthens friendship and accustoms men to give things to one another.

Reply to Objection 2. The Law did not prescribe that women should succeed to their father's estate except in default of male issue: failing which it was necessary that succession should be granted to the female line in order to comfort the father, who would have been sad to think that his estate would pass to strangers. Nevertheless the Law observed due caution in the matter, by providing that those women who succeeded to their father's estate, should marry within their own tribe, in order to avoid confusion of tribal possessions, as stated in Num. 36:7,8.

Reply to Objection 3. As the Philosopher says (Polit. ii, 4), the regulation of possessions conduces much to the preservation of a state or nation. Consequently, as he himself observes, it was forbidden by the law in some of the heathen states, "that anyone should sell his possessions, except to avoid a manifest loss." For if possessions were to be sold indiscriminately, they might happen to come into the hands of a few: so that it might become necessary for a state or country to become void of inhabitants. Hence the Old Law, in order to remove this danger, ordered things in such a way that while provision was made for men's needs, by allowing the sale of possessions to avail for a certain period, at the same time the said danger was removed, by prescribing the return of those possessions after that period had elapsed. The reason for this law was to prevent confusion of possessions, and to ensure the continuance of a definite distinction among the tribes.

But as the town houses were not allotted to distinct estates, therefore the Law allowed them to be sold in perpetuity, like movable goods. Because the number of houses in a town was not fixed, whereas there was a fixed limit to the amount of estates, which could not be exceeded, while the number of houses in a town could be increased. On the other hand, houses situated not in a town, but "in a village that hath no walls," could not be sold in perpetuity: because such houses are built merely with a view to the cultivation and care of possessions; wherefore the Law rightly made the same prescription

in regard to both (Lev. 25).

Reply to Objection 4. As stated above (ad 1), the purpose of the Law was to accustom men to its precepts, so as to be ready to come to one another's assistance: because this is a very great incentive to friendship. The Law granted these facilities for helping others in the matter not only of gratuitous and absolute donations, but also of mutual transfers: because the latter kind of succor is more frequent and benefits the greater number: and it granted facilities for this purpose in many ways. First of all by prescribing that men should be ready to lend, and that they should not be less inclined to do so as the year of remission drew nigh, as stated in Dt. 15:7, seqq. Secondly, by forbidding them to burden a man to whom they might grant a loan, either by exacting usury, or by accepting necessities of life in security; and by prescribing that when this had been done they should be restored at once. For it is written (Dt. 23:19): "Thou shalt not lend to thy brother money to usury": and (Dt. 24:6): "Thou shalt not take the nether nor the upper millstone to pledge; for he hath pledged his life to thee": and (Ex. 22:26): "If thou take of thy neighbor a garment in pledge, thou shalt give it him again before sunset." Thirdly, by forbidding them to be importunate in exacting payment. Hence it is written (Ex. 22:25): "If thou lend money to any of my people that is poor that dwelleth with thee, thou shalt not be hard upon them as an extortioner." For this reason, too, it is enacted (Dt. 24:10,11): "When thou shalt demand of thy neighbor anything that he oweth thee, thou shalt not go into his house to take away a pledge, but thou shalt stand without, and he shall bring out to thee what he hath": both because a man's house is his surest refuge, wherefore it is offensive to a man to be set upon in his own house; and because the Law does not allow the creditor to take away whatever he likes in security, but rather permits the debtor to give what he needs least. Fourthly, the Law prescribed that debts should cease together after the lapse of seven years. For it was probable that those who could conveniently pay their debts, would do so before the seventh year, and would not defraud the lender without cause. But if they were altogether insolvent, there was the same reason for remitting the debt from love for them, as there was for renewing the loan on account of their need.

As regards animals granted in loan, the Law enacted that if, through the neglect of the person to whom they were lent, they perished or deteriorated in his absence, he was bound to make restitution. But if they perished or deteriorated while he was present and taking proper care of them, he was not bound to make restitution, especially if they were hired for a consideration: because they might have died or deteriorated in the same way if they had remained in possession of the lender, so that if the animal had been saved through being lent, the lender would have gained something by the loan which would no longer have been gratuitous. And especially was this to be observed when animals were hired for a consider-

ation: because then the owner received a certain price for the use of the animals; wherefore he had no right to any profit, by receiving indemnity for the animal, unless the person who had charge of it were negligent. In the case, however, of animals not hired for a consideration, equity demanded that he should receive something by way of restitution at least to the value of the hire of the animal that had perished or deteriorated.

Reply to Objection 5. The difference between a loan and a deposit is that a loan is in respect of goods transferred for the use of the person to whom they are transferred, whereas a deposit is for the benefit of the depositor. Hence in certain cases there was a stricter obligation of returning a loan than of restoring goods held in deposit. Because the latter might be lost in two ways. First, unavoidably: i.e. either through a natural cause, for instance if an animal held in deposit were to die or depreciate in value; or through an extrinsic cause, for instance, if it were taken by an enemy, or devoured by a beast (in which case, however, a man was bound to restore to the owner what was left of the animal thus slain): whereas in the other cases mentioned above, he was not bound to make restitution; but only to take an oath in order to clear himself of suspicion. Secondly, the goods deposited might be lost through an avoidable cause, for instance by theft: and then the depositary was bound to restitution on account of his neglect. But, as stated above (ad 4), he who held an animal on loan, was bound to restitution, even if he were absent when it depreciated or died: because he was held responsible for less negligence than a depositary, who was only held responsible in case of theft.

Reply to Objection 6. Workmen who offer their labor for hire, are poor men who toil for their daily bread: and therefore the Law commanded wisely that they should be paid at once, lest they should lack food. But they who offer other commodities for hire, are wont to be rich: nor are they in such need of their price in order to gain a livelihood: and consequently the comparison does not hold.

Reply to Objection 7. The purpose for which judges are appointed among men, is that they may decide doubtful points in matters of justice. Now a matter may be doubtful in two ways. First, among simple-minded people: and in order to remove doubts of this kind, it was prescribed (Dt. 16:18) that “judges and magistrates” should be appointed in each tribe, “to judge the people with just judgment.” Secondly, a matter may be doubtful even among experts: and therefore, in order to remove doubts of this kind, the Law prescribed that all should foregather in some chief place chosen by God, where there would be both the high-priest, who would decide doubtful matters relating to the ceremonies of divine worship; and the chief judge of the people, who would decide matters relating to the judgments of men: just as even now cases are taken from a lower to a higher court either by appeal or by consultation. Hence it is written (Dt. 17:8,9): “If thou

perceive that there be among you a hard and doubtful matter in judgment. . . and thou see that the words of the judges within thy gates do vary; arise and go up to the place, which the Lord thy God shall choose; and thou shalt come to the priests of the Levitical race, and to the judge that shall be at that time.” But such like doubtful matters did not often occur for judgment: wherefore the people were not burdened on this account.

Reply to Objection 8. In the business affairs of men, there is no such thing as demonstrative and infallible proof, and we must be content with a certain conjectural probability, such as that which an orator employs to persuade. Consequently, although it is quite possible for two or three witnesses to agree to a falsehood, yet it is neither easy nor probable that they succeed in so doing: wherefore their testimony is taken as being true, especially if they do not waver in giving it, or are not otherwise suspect. Moreover, in order that witnesses might not easily depart from the truth, the Law commanded that they should be most carefully examined, and that those who were found untruthful should be severely punished, as stated in Dt. 19:16, seqq.

There was, however, a reason for fixing on this particular number, in token of the unerring truth of the Divine Persons, Who are sometimes mentioned as two, because the Holy Ghost is the bond of the other two Persons; and sometimes as three: as Augustine observes on Jn. 8:17: “In your law it is written that the testimony of two men is true.”

Reply to Objection 9. A severe punishment is inflicted not only on account of the gravity of a fault, but also for other reasons. First, on account of the greatness of the sin, because a greater sin, other things being equal, deserves a greater punishment. Secondly, on account of a habitual sin, since men are not easily cured of habitual sin except by severe punishments. Thirdly, on account of a great desire for or a great pleasure in the sin: for men are not easily deterred from such sins unless they be severely punished. Fourthly, on account of the facility of committing a sin and of concealing it: for such like sins, when discovered, should be more severely punished in order to deter others from committing them.

Again, with regard to the greatness of a sin, four degrees may be observed, even in respect of one single deed. The first is when a sin is committed unwillingly; because then, if the sin be altogether involuntary, man is altogether excused from punishment; for it is written (Dt. 22:25, seqq.) that a damsel who suffers violence in a field is not guilty of death, because “she cried, and there was no man to help her.” But if a man sinned in any way voluntarily, and yet through weakness, as for instance when a man sins from passion, the sin is diminished: and the punishment, according to true judgment, should be diminished also; unless perchance the common weal requires that the sin be severely punished in order to deter others from committing such sins, as stated above. The second degree is when a man sins

through ignorance: and then he was held to be guilty to a certain extent, on account of his negligence in acquiring knowledge: yet he was not punished by the judges but expiated his sin by sacrifices. Hence it is written (Lev. 4:2): “The soul that sinneth through ignorance,” etc. This is, however, to be taken as applying to ignorance of fact; and not to ignorance of the Divine precept, which all were bound to know. The third degree was when a man sinned from pride, i.e. through deliberate choice or malice: and then he was punished according to the greatness of the sin*. The fourth degree was when a man sinned from stubbornness or obstinacy: and then he was to be utterly cut off as a rebel and a destroyer of the commandment of the Law†.

Accordingly we must say that, in appointing the punishment for theft, the Law considered what would be likely to happen most frequently (Ex. 22:1-9): wherefore, as regards theft of other things which can easily be safeguarded from a thief, the thief restored only twice their value. But sheep cannot be easily safeguarded from a thief, because they graze in the fields: wherefore it happened more frequently that sheep were stolen in the fields. Consequently the Law inflicted a heavier penalty, by ordering four sheep to be restored for the theft of one. As to cattle, they were yet more difficult to safeguard, because they are kept in the fields, and do not graze in flocks as sheep do; wherefore a yet more heavy penalty was inflicted in their regard, so that five oxen were to be restored for one ox. And this I say, unless perchance the animal itself were discovered in the thief’s possession: because in that case he had to restore only twice the number, as in the case of other thefts: for there was reason to presume that he intended to restore the animal, since he kept it alive. Again, we might say, according to a gloss, that “a cow is useful in five ways: it may be used for sacrifice, for ploughing, for food, for milk, and its hide is employed for various purposes”: and therefore for one cow five had to be restored. But the sheep was useful in four ways: “for sacrifice, for meat, for milk, and for its wool.” The unruly son was slain, not because he ate and drank: but on account of his stubbornness and rebellion, which was always punished by death, as stated above. As to the man who gathered sticks on the sabbath, he was stoned as a breaker of the Law, which commanded the sabbath to be observed, to testify the belief in the newness of the world, as stated above (q. 100, a. 5): wherefore he was slain as an unbeliever.

Reply to Objection 10. The Old Law inflicted the death penalty for the more grievous crimes, viz. for those which are committed against God, and for murder, for stealing a man, irreverence towards one’s parents, adultery and incest. In the case of thief of other things it inflicted punishment by indemnification: while in the case of blows and mutilation it authorized punishment by retaliation; and likewise for the sin of bearing false witness. In other faults of less degree it prescribed

the punishment of stripes or of public disgrace.

The punishment of slavery was prescribed by the Law in two cases. First, in the case of a slave who was unwilling to avail himself of the privilege granted by the Law, whereby he was free to depart in the seventh year of remission: wherefore he was punished by remaining a slave for ever. Secondly, in the case of a thief, who had not wherewith to make restitution, as stated in Ex. 22:3.

The punishment of absolute exile was not prescribed by the Law: because God was worshipped by that people alone, whereas all other nations were given to idolatry: wherefore if any man were exiled from that people absolutely, he would be in danger of falling into idolatry. For this reason it is related (1 Kings 26:19) that David said to Saul: “They are cursed in the sight of the Lord, who have cast me out this day, that I should not dwell in the inheritance of the Lord, saying: Go, serve strange gods.” There was, however, a restricted sort of exile: for it is written in Dt. 19:4* that “he that striketh [Vulg.: ‘killeth’] his neighbor ignorantly, and is proved to have had no hatred against him, shall flee to one of the cities” of refuge and “abide there until the death of the high-priest.” For then it became lawful for him to return home, because when the whole people thus suffered a loss they forgot their private quarrels, so that the next of kin of the slain were not so eager to kill the slayer.

Reply to Objection 11. Dumb animals were ordered to be slain, not on account of any fault of theirs; but as a punishment to their owners, who had not safeguarded their beasts from these offenses. Hence the owner was more severely punished if his ox had butted anyone “yesterday or the day before” (in which case steps might have been taken to butting suddenly). Or again, the animal was slain in detestation of the sin; and lest men should be horrified at the sight thereof.

Reply to Objection 12. The literal reason for this commandment, as Rabbi Moses declares (Doct. Perplex. iii), was because the slayer was frequently from the nearest city: wherefore the slaying of the calf was a means of investigating the hidden murder. This was brought about in three ways. In the first place the elders of the city swore that they had taken every measure for safeguarding the roads. Secondly, the owner of the heifer was indemnified for the slaying of his beast, and if the murder was previously discovered, the beast was not slain. Thirdly, the place, where the heifer was slain, remained uncultivated. Wherefore, in order to avoid this twofold loss, the men of the city would readily make known the murderer, if they knew who he was: and it would seldom happen but that some word or sign would escape about the matter. Or again, this was done in order to frighten people, in detestation of murder. Because the slaying of a heifer, which is a useful animal and full of strength, especially before it has been put under the yoke, signified that whoever committed murder, how-

* Cf. Dt. 25:2 † Cf. Num. 15:30,31 * Cf. Num. 35:25

ever useful and strong he might be, was to forfeit his life; and that, by a cruel death, which was implied by the striking off of its head; and that the murderer, as vile and abject, was to be cut off from the fellowship of men, which was betokened by the fact that the heifer after being slain was left to rot in a rough and uncultivated place.

Mystically, the heifer taken from the herd signifies the flesh of Christ; which had not drawn a yoke, since it had done no sin; nor did it plough the ground, i.e. it never knew the stain of revolt. The fact of the heifer being killed in an uncultivated valley signified the despised death of Christ, whereby all sins are washed away, and the devil is shown to be the arch-murderer.