

FIRST PART OF THE SECOND PART, QUESTION 104

Of the Judicial Precepts (In Four Articles)

We must now consider the judicial precepts: and first of all we shall consider them in general; in the second place we shall consider their reasons. Under the first head there are four points of inquiry:

- (1) What is meant by the judicial precepts?
- (2) Whether they are figurative?
- (3) Their duration;
- (4) Their division.

Whether the judicial precepts were those which directed man in relation to his neighbor?

Ia IIae q. 104 a. 1

Objection 1. It would seem that the judicial precepts were not those which directed man in his relations to his neighbor. For judicial precepts take their name from “judgment.” But there are many things that direct man as to his neighbor, which are not subordinate to judgment. Therefore the judicial precepts were not those which directed man in his relations to his neighbor.

Objection 2. Further, the judicial precepts are distinct from the moral precepts, as stated above (q. 99, a. 4). But there are many moral precepts which direct man as to his neighbor: as is evidently the case with the seven precepts of the second table. Therefore the judicial precepts are not so called from directing man as to his neighbor.

Objection 3. Further, as the ceremonial precepts relate to God, so do the judicial precepts relate to one’s neighbor, as stated above (q. 99, a. 4; q. 101, a. 1). But among the ceremonial precepts there are some which concern man himself, such as observances in matter of food and apparel, of which we have already spoken (q. 102, a. 6, ad 1,6). Therefore the judicial precepts are not so called from directing man as to his neighbor.

On the contrary, It is reckoned (Ezech. 18:8) among other works of a good and just man, that “he hath executed true judgment between man and man.” But judicial precepts are so called from “judgment.” Therefore it seems that the judicial precepts were those which directed the relations between man and man.

I answer that, As is evident from what we have stated above (q. 95, a. 2 ; q. 99, a. 4), in every law, some precepts derive their binding force from the dictate of reason itself, because natural reason dictates that something ought to be done or to be avoided. These are called “moral” precepts: since human morals are based on reason. At the same time there are other precepts which derive their binding force, not from the very dictate of reason (because, considered in themselves, they do not imply an obligation of something due or undue); but from some institution, Divine or human: and such are certain determinations of the moral

precepts. When therefore the moral precepts are fixed by Divine institution in matters relating to man’s subordination to God, they are called “ceremonial” precepts: but when they refer to man’s relations to other men, they are called “judicial” precepts. Hence there are two conditions attached to the judicial precepts: viz. first, that they refer to man’s relations to other men; secondly, that they derive their binding force not from reason alone, but in virtue of their institution.

Reply to Objection 1. Judgments emanate through the official pronouncement of certain men who are at the head of affairs, and in whom the judicial power is vested. Now it belongs to those who are at the head of affairs to regulate not only litigious matters, but also voluntary contracts which are concluded between man and man, and whatever matters concern the community at large and the government thereof. Consequently the judicial precepts are not only those which concern actions at law; but also all those that are directed to the ordering of one man in relation to another, which ordering is subject to the direction of the sovereign as supreme judge.

Reply to Objection 2. This argument holds in respect of those precepts which direct man in his relations to his neighbor, and derive their binding force from the mere dictate of reason.

Reply to Objection 3. Even in those precepts which direct us to God, some are moral precepts, which the reason itself dictates when it is quickened by faith; such as that God is to be loved and worshipped. There are also ceremonial precepts, which have no binding force except in virtue of their Divine institution. Now God is concerned not only with the sacrifices that are offered to Him, but also with whatever relates to the fitness of those who offer sacrifices to Him and worship Him. Because men are ordained to God as to their end; wherefore it concerns God and, consequently, is a matter of ceremonial precept, that man should show some fitness for the divine worship. On the other hand, man is not ordained to his neighbor as

to his end, so as to need to be disposed in himself with regard to his neighbor, for such is the relationship of a slave to his master, since a slave “is his master’s in all that he is,” as the Philosopher says (Polit. i, 2). Hence there are no judicial precepts ordaining man in himself; all such precepts are moral: because the reason, which is the principal in moral matters, holds the same position, in man, with regard to things that concern him, as a prince or judge holds

in the state. Nevertheless we must take note that, since the relations of man to his neighbor are more subject to reason than the relations of man to God, there are more precepts whereby man is directed in his relations to his neighbor, than whereby he is directed to God. For the same reason there had to be more ceremonial than judicial precepts in the Law.

Whether the judicial precepts were figurative?

Ia IIae q. 104 a. 2

Objection 1. It would seem that the judicial precepts were not figurative. Because it seems proper to the ceremonial precepts to be instituted as figures of something else. Therefore, if the judicial precepts are figurative, there will be no difference between the judicial and ceremonial precepts.

Objection 2. Further, just as certain judicial precepts were given to the Jewish people, so also were some given to other heathen peoples. But the judicial precepts given to other peoples were not figurative, but stated what had to be done. Therefore it seems that neither were the judicial precepts of the Old Law figures of anything.

Objection 3. Further, those things which relate to the divine worship had to be taught under certain figures, because the things of God are above our reason, as stated above (q. 101, a. 2, ad 2). But things concerning our neighbor are not above our reason. Therefore the judicial precepts which direct us in relation to our neighbor should not have been figurative.

On the contrary, The judicial precepts are expounded both in the allegorical and in the moral sense (Ex. 21).

I answer that, A precept may be figurative in two ways. First, primarily and in itself: because, to wit, it is instituted principally that it may be the figure of something. In this way the ceremonial precepts are figurative; since they were instituted for the very purpose that they might foreshadow something relating to the worship of God and the mystery of Christ. But some precepts are figurative,

not primarily and in themselves, but consequently. In this way the judicial precepts of the Old Law are figurative. For they were not instituted for the purpose of being figurative, but in order that they might regulate the state of that people according to justice and equity. Nevertheless they did foreshadow something consequently: since, to wit, the entire state of that people, who were directed by these precepts, was figurative, according to 1 Cor. 10:11: “All... things happened to them in figure.”

Reply to Objection 1. The ceremonial precepts are not figurative in the same way as the judicial precepts, as explained above.

Reply to Objection 2. The Jewish people were chosen by God that Christ might be born of them. Consequently the entire state of that people had to be prophetic and figurative, as Augustine states (Contra Faust. xxii, 24). For this reason even the judicial precepts that were given to this people were more figurative than those which were given to other nations. Thus, too, the wars and deeds of this people are expounded in the mystical sense: but not the wars and deeds of the Assyrians or Romans, although the latter are more famous in the eyes of men.

Reply to Objection 3. In this people the direction of man in regard to his neighbor, considered in itself, was subject to reason. But in so far as it was referred to the worship of God, it was above reason: and in this respect it was figurative.

Whether the judicial precepts of the Old Law bind for ever?

Ia IIae q. 104 a. 3

Objection 1. It would seem that the judicial precepts of the Old Law bind for ever. Because the judicial precepts relate to the virtue of justice: since a judgment is an execution of the virtue of justice. Now “justice is perpetual and immortal” (Wis. 1:15). Therefore the judicial precepts bind for ever.

Objection 2. Further, Divine institutions are more enduring than human institutions. But the judicial precepts of human laws bind for ever. Therefore much more do the judicial precepts of the Divine Law.

Objection 3. Further, the Apostle says (Heb. 7:18)

that “there is a setting aside of the former commandment, because of the weakness and unprofitableness thereof.” Now this is true of the ceremonial precept, which “could [Vulg.: ‘can’] not, as to the conscience, make him perfect that serveth only in meats and in drinks, and divers washings and justices of the flesh,” as the Apostle declares (Heb. 9:9,10). On the other hand, the judicial precepts were useful and efficacious in respect of the purpose for which they were instituted, viz. to establish justice and equity among men. Therefore the judicial precepts of the Old Law are not set aside, but still retain their efficacy.

On the contrary, The Apostle says (Heb. 7:12) that “the priesthood being translated it is necessary that a translation also be made of the Law.” But the priesthood was transferred from Aaron to Christ. Therefore the entire Law was also transferred. Therefore the judicial precepts are no longer in force.

I answer that, The judicial precepts did not bind for ever, but were annulled by the coming of Christ: yet not in the same way as the ceremonial precepts. For the ceremonial precepts were annulled so far as to be not only “dead,” but also deadly to those who observe them since the coming of Christ, especially since the promulgation of the Gospel. On the other hand, the judicial precepts are dead indeed, because they have no binding force: but they are not deadly. For if a sovereign were to order these judicial precepts to be observed in his kingdom, he would not sin: unless perchance they were observed, or ordered to be observed, as though they derived their binding force through being institutions of the Old Law: for it would be a deadly sin to intend to observe them thus.

The reason for this difference may be gathered from what has been said above (a. 2). For it has been stated that the ceremonial precepts are figurative primarily and in themselves, as being instituted chiefly for the purpose of foreshadowing the mysteries of Christ to come. On the other hand, the judicial precepts were not instituted that they might be figures, but that they might shape the state of that people who were directed to Christ. Consequently, when the state of that people changed with the coming of Christ, the judicial precepts lost their binding force: for the Law was a pedagogue, leading men to Christ, as stated

in Gal. 3:24. Since, however, these judicial precepts are instituted, not for the purpose of being figures, but for the performance of certain deeds, the observance thereof is not prejudicial to the truth of faith. But the intention of observing them, as though one were bound by the Law, is prejudicial to the truth of faith: because it would follow that the former state of the people still lasts, and that Christ has not yet come.

Reply to Objection 1. The obligation of observing justice is indeed perpetual. But the determination of those things that are just, according to human or Divine institution, must needs be different, according to the different states of mankind.

Reply to Objection 2. The judicial precepts established by men retain their binding force for ever, so long as the state of government remains the same. But if the state or nation pass to another form of government, the laws must needs be changed. For democracy, which is government by the people, demands different laws from those of oligarchy, which is government by the rich, as the Philosopher shows (Polit. iv, 1). Consequently when the state of that people changed, the judicial precepts had to be changed also.

Reply to Objection 3. Those judicial precepts directed the people to justice and equity, in keeping with the demands of that state. But after the coming of Christ, there had to be a change in the state of that people, so that in Christ there was no distinction between Gentile and Jew, as there had been before. For this reason the judicial precepts needed to be changed also.

Whether it is possible to assign a distinct division of the judicial precepts?

Ia IIae q. 104 a. 4

Objection 1. It would seem that it is impossible to assign a distinct division of the judicial precepts. Because the judicial precepts direct men in their relations to one another. But those things which need to be directed, as pertaining to the relationship between man and man, and which are made use of by men, are not subject to division, since they are infinite in number. Therefore it is not possible to assign a distinct division of the judicial precepts.

Objection 2. Further, the judicial precepts are decisions on moral matters. But moral precepts do not seem to be capable of division, except in so far as they are reducible to the precepts of the decalogue. Therefore there is no distinct division of the judicial precepts.

Objection 3. Further, because there is a distinct division of the ceremonial precepts, the Law alludes to this division, by describing some as “sacrifices,” others as “observances.” But the Law contains no allusion to a division of the judicial precepts. Therefore it seems that they have no distinct division.

On the contrary, Wherever there is order there must needs be division. But the notion of order is chiefly applicable to the judicial precepts, since thereby that people was ordained. Therefore it is most necessary that they should have a distinct division.

I answer that, Since law is the art, as it were, of directing or ordering the life of man, as in every art there is a distinct division in the rules of art, so, in every law, there must be a distinct division of precepts: else the law would be rendered useless by confusion. We must therefore say that the judicial precepts of the Old Law, whereby men were directed in their relations to one another, are subject to division according to the divers ways in which man is directed.

Now in every people a fourfold order is to be found: one, of the people’s sovereign to his subjects; a second of the subjects among themselves; a third, of the citizens to foreigners; a fourth, of members of the same household, such as the order of the father to his son; of the wife to

her husband; of the master to his servant: and according to these four orders we may distinguish different kinds of judicial precepts in the Old Law. For certain precepts are laid down concerning the institution of the sovereign and relating to his office, and about the respect due to him: this is one part of the judicial precepts. Again, certain precepts are given in respect of a man to his fellow citizens: for instance, about buying and selling, judgments and penalties: this is the second part of the judicial precepts. Again, certain precepts are enjoined with regard to foreigners: for instance, about wars waged against their foes, and about the way to receive travelers and strangers: this is the third part of the judicial precepts. Lastly, certain precepts are given relating to home life: for instance, about servants, wives and children: this is the fourth part of the judicial precepts.

Reply to Objection 1. Things pertaining to the ordering of relations between one man and another are indeed infinite in number: yet they are reducible to certain distinct heads, according to the different relations in which one man stands to another, as stated above.

Reply to Objection 2. The precepts of the decalogue held the first place in the moral order, as stated above (q. 100, a. 3): and consequently it is fitting that other moral precepts should be distinguished in relation to them. But the judicial and ceremonial precepts have a different binding force, derived, not from natural reason, but from their institution alone. Hence there is a distinct reason for distinguishing them.

Reply to Objection 3. The Law alludes to the division of the judicial precepts in the very things themselves which are prescribed by the judicial precepts of the Law.