

## QUESTION 105

### The Reasons for the Judicial Precepts

Next we have to consider the reasons for the judicial precepts. On this topic there are four questions: (1) What are the reasons for the judicial precepts that have to do with the rulers? (2) What are the reasons for the ones that have to do with the common life of men with one another? (3) What are the reasons for the ones that have to do with outsiders? (4) What are the reasons for the ones that have to do with domestic life?

#### Article 1

##### Did the Old Law give appropriate direction concerning the rulers?

It seems that the Old Law did not give appropriate direction (*inconvenienter ordinaverit*) concerning the rulers:

**Objection 1:** As the Philosopher says in *Politics* 3, “The governance of the people depends principally on the highest ruling office.” But the Law does not say how the highest ruler should be appointed. By contrast, it does say something about the lower rulers in Exodus 18:21-22 (“Provide wise men from among the whole people”), Numbers 11:16-17 (“Gather to me seventy men from among the elders of Israel”), and Deuteronomy 1:13 (“Give me wise and knowledgeable men from among yourselves,” and so on). Therefore, the Old Law did not give sufficient direction concerning the rulers of the people.

**Objection 2:** As Plato says, “It belongs to the best to do the best.” But the best arrangement for a city or for any people is that it should be governed by a king, since governance (*regimen*) of this sort is the best representation of the divine governance by which God rules the world. Therefore, the Law should have set up a king for the people from the beginning, and it should not have left this up to the choice of the people, as Deuteronomy 27:14-15 does (“When you shall say, ‘I will set a king over me’, then you will set him over you,” and so on).

**Objection 3:** As Matthew 12:25 says, “Every kingdom divided against itself will be laid waste,” and this became clear from experience in the case of the Jewish people, among whom the division of the kingdom was a cause of devastation. But the Law should principally tend toward what contributes to the common welfare. Therefore, the Law should have forbidden the division of the kingdom between two kings. Nor should this division have been introduced by divine authority, in the way that, according to 3 Kings 11, it was introduced by the Lord’s authority through the prophet Ahijah the Shilonite.

**Objection 4:** Just as the priests are ordained (*instituuntur*) in order to benefit the people in those things that have to do with God, as is clear from Hebrews 5, so too the rulers are constituted in order to benefit the people in human affairs. But certain things on which their livelihood depends—e.g., tithes and first fruits and many other such things—are allotted to the priests and Levites under the Law. Therefore, in the same way, certain things necessary for sustenance should have been directed to the rulers of the people, especially in light of the fact that they were forbidden to accept gifts, as is clear from Exodus 23:8 (“You shall not accept gifts, which make even prudent men blind and subvert the words of the just”).

**Objection 5:** Just as a monarchy (*regnum*) is the best kind of government (*regimen*), so a tyranny is the worst corruption of government. But in setting up a king, the Lord instituted a tyrannical rule; for 1 Kings 8:11 says, “This will be the right of the king who is to rule over you: that he should take your sons,” and so on. Therefore, the Law did not appropriately provide for the regulation of the rulers.

**But contrary to this:** In Numbers 24:5 the people of Israel is commended for the elegance of its

order (“How beautiful are your tabernacles, O Jacob, and your tents, O Israel”). But the beauty of a people’s order depends on its rulers being instituted in the right way. Therefore, through the Law this people was set up correctly with respect to its rulers.

**I respond:** There are two points to notice regarding the fitting institution (*ordinatio*) of the rulers in a city or among a people.

The first is that everyone should have some role in governance (*principatus*), since, as *Politics 2* points out, the peaceful existence (*pax*) of a people is thereby maintained, and everyone loves and safeguards an arrangement of this sort.

The second point has to do with the type of political arrangement (*species regiminis*), i.e., the manner in which the ruling offices are constituted. Even though, as the Philosopher points out in *Politics 3*, there are various types of political arrangements, the preeminent types are monarchy (*regnum*), in which a single ruler governs in accord with virtue (*principatur secundum virtutem*), and aristocracy (*aristocratia*), i.e., rule by the best, in which a small number govern in accord with virtue.

Hence, the best manner of constituting the ruling offices occurs in a city or region in which (a) there is a single person who is placed in authority on the basis of virtue (*secundum virtutem*) and presides over everyone, and in which (b) under him there are certain others who govern in accord with virtue, and yet in which (c) this political arrangement involves everyone (*ad omnes pertinet*), both because the rulers can be chosen *from among* everyone and also because they are chosen *by* everyone. This is the best political arrangement, with a good mixture of (a) *monarchy*, insofar as there is a single preeminent ruler, and (b) *aristocracy*, insofar as many govern in accord with virtue, and (c) *democracy*, i.e., rule by the people, insofar as the rulers can be chosen from among the people and the choice of rulers falls to the people (*ad populum pertinet electio principium*).

This was the arrangement instituted by divine law. For Moses and his successors governed the people as single rulers over all, which is a certain type of monarchy. Moreover, the seventy-two elders were chosen for their virtue; for Deuteronomy 1:15 says, “I took from your tribes men who were wise and honorable, and I made them rulers.” And this was similar to aristocracy. On the other hand, it was democratic in that (a) these rulers were chosen from among all the people (Exodus 18:21: “Provide wise men from among the whole people”) and (b) the people chose them (Deuteronomy 1:13: “Give me wise men from among yourselves,” and so on). Hence, it is clear that the Law established the best arrangement for the rulers.

**Reply to objection 1:** The people in question were ruled under God’s special care; this is why Deuteronomy 7:6 says, “The Lord your God chose you to be His special people.” And so the Lord reserved to Himself the institution of the highest ruler. And this is just what Moses asked for in Numbers 27:16: “May the Lord, the God of the spirits of all flesh, provide a man to preside over this multitude.” And so Joshua was appointed by God’s command to govern after Moses. And we read, with respect to each of the judges who succeeded Joshua, that “God raised up a savior for the people,” and that “the spirit of the Lord” was in them, as is clear from Judges 3. And so, as is clear from Deuteronomy 17:15 (“You shall appoint him king whom the Lord your God chooses”), the Lord did not hand over to the people the choice of a king, but instead reserved it for Himself.

**Reply to objection 2:** As long as it is not corrupt, monarchy is the best political arrangement for a people. However, because of the great power that is granted to a king, monarchy easily degenerates into tyranny unless the one who is granted such power is completely virtuous. For as the Philosopher says in *Ethics 6*, it is only the virtuous who bear good fortune well.

Now complete virtue is found in only a few cases, and the Jews were particularly cruel and prone to greed—vices through which men especially fall into tyranny. And so at the beginning the Lord did not establish for them a king with full power, but instead instituted a judge and a governor to watch over them. Later on, however, at the request of the people, He granted them a king—though indignantly, so to

speak, as is clear from what He said to Samuel in 1 Kings 8:7 (“It is not you they have rejected, but me, lest I rule over them”).

However, as regards the institution of a king, He did make arrangements from the beginning, first of all, for the manner of choosing a king. In this regard, He made two specifications, viz., (a) that in choosing a king they should wait for the Lord’s judgment, and (b) that they should not make anyone from another nation king, since such kings have no affective ties to the nation over which they preside and, as a result, do not take care of the people. Second, He prescribed how the kings, once appointed, should behave with respect to themselves, viz., that they should not accumulate chariots or horses or wives or even great wealth, since a strong desire for these things makes rulers fall into tyranny and abandon justice. He also specified how they should behave with respect to God, viz., that they should always be reading and meditating on God’s Law, and that they should always live in the fear of God and in obedience to Him. He also specified how they should behave with respect to their subjects, viz., that they should not hold them in contempt out of pride or oppress them, and also that they should not deviate from justice.

**Reply to objection 3:** The division of the kingdom and the multiplication of kings was given to the people less as something for their benefit than as a punishment for the many instances of dissension that they directed against David’s just kingdom. Hence, Hosea 13:11 says, “I will give you a king in my anger,” and Hosea 8:4 says, “They themselves ruled, but not because of me; they became rulers, and I did not know it.”

**Reply to objection 4:** The priests were appointed to sacred affairs through a succession of birth. And the reason was that they would be held in greater reverence if not just anyone from among the people could become a priest; and the honor they received contributed to the reverence for divine worship. And so they had to be granted certain special provisions in the form of tithes and first fruits, as well as oblations and sacrifices, so that they might live off of those things.

By contrast, the rulers, as has been explained, were taken from the people as a whole, and so they had certain possessions of their own that they could live off of. Also, and especially, the Lord forbade the king to have extravagant wealth or showy magnificence, both because (a), given these things, it would be difficult for him not to be led into pride and tyranny, and also because (b) if the rulers were not extravagantly rich, and if ruling were arduous and full of anxiety, then ordinary people would not aspire to rule—and in this way one cause of rebellion (*sedition*) was removed.

**Reply to objection 5:** It is not the case that this right was being given to the king by divine institution; rather, the passage is foretelling the usurpation by the kings, who establish this unjust right as they degenerate into tyranny and plunder their subjects.

This interpretation is clear from what is added at the end—viz., “..... and you will be his servants”—which properly has to do with tyranny, since tyrants rule their subjects as if they were servants. Hence, Samuel uttered these words in order to deter them from asking for a king. For what follows is this: “The people refused to listen to the voice of Samuel.”

Still, it can happen that even a good king, in the absence of tyranny, takes away the sons and makes them tribunes and centurions, and demands many things from his subjects—and this in order to procure the common good.

## Article 2

### Were appropriate judicial precepts given with respect to the common life of the people?

It seems that appropriate judicial precepts were not given with respect to the common life of the

people:

**Objection 1:** Men cannot live peacefully with one another if one takes what belongs to another. But this seems to be encouraged in the Law; for Deuteronomy 23:24 says, “Having entered your neighbor’s vineyard, eat as many grapes as you please.” Therefore, the Old Law did not appropriately provide for peace among men.

**Objection 2:** As the Philosopher points out in *Politics* 2, a chief reason why many cities and kingdoms are destroyed is that their possessions fall to women. But this very thing was introduced in the Old Law; for Numbers 27:8 says, “When a man dies without a son, his inheritance shall pass to his daughter.” Therefore, the Law did not appropriately provide for the welfare of the people.

**Objection 3:** As *Politics* 1 says, human society is mainly conserved by the fact that men provide one another with the things they need through buying and selling. But as is clear from Leviticus 25:28, the Old Law undermined the effect of commerce (*virtus venditionis*) by commanding that possessions that had been sold should revert to the seller during the fiftieth year, the year of the Jubilee. Therefore, the Law did not appropriately direct the people on this matter.

**Objection 4:** Human needs are met especially by the fact that men are ready to lend. Yet this readiness is undermined when borrowers do not return what they have taken; hence, Ecclesiasticus 29:10 says, “Many have refused to lend, not out of wickedness, but because they were afraid of being defrauded without cause.” But the Law encourages just this. For, first of all, Deuteronomy 15:2 commanded, “One to whom something is owed by his friend or neighbor or brother shall not ask for it back, because it is the Lord’s year of remission,” and, again, Exodus 22:15 says that if a borrowed animal dies while its owner is present, the borrower does not have to make restitution (*reddere*). Second, the security the lender has because of the promised collateral (*pignus*) is undermined; for Deuteronomy 24:10ff. says, “When you demand of your neighbor something that he owes you, you shall not go into his house to take away the promised collateral,” and, again, “The promised collateral shall not pass the night with you, but you shall give it back to him immediately.” Therefore, the Law did not give sufficient direction in the case of lending.

**Objection 5:** There is a very great risk of being defrauded of what one has deposited for safekeeping (*depositum*), and so the greatest caution has to be exercised; hence, 2 Maccabees 3:15 says, “The priests ..... called upon Him from heaven who made the law concerning things deposited for safekeeping, that He would preserve them safe for those who had deposited them.” But in the precepts of the Old Law little caution is shown in the case of things deposited for safekeeping. For Exodus 22:10-11 says that when something deposited for safekeeping is lost, one should accept the oath of the one with whom the thing was deposited. Therefore, the Law’s direction on this matter was inappropriate.

**Objection 6:** Just as a wage laborer hires out his services, so too some rent out their houses or other possessions. But it is not necessary that a tenant (*conductor*) immediately pay the rent on a house he has rented. Therefore, it was excessively harsh for Leviticus 19:13 to command, “The wages owed to your wage laborer shall not remain in your hands all the way until morning.”

**Objection 7:** Since there is a frequent need for judgments, there should be easy access to a judge. Therefore, it was inappropriate for the Law to prescribe in Deuteronomy 17:8-9 that those seeking judgment for their cases should all proceed to a single fixed place.

**Objection 8:** It is possible not only for two people, but also for three or more, to agree to lie. Therefore, it was inappropriate for Deuteronomy 19:15 to say, “Every word that comes from the mouth of two or three witnesses shall stand.”

**Objection 9:** Punishment should be determined according to the measure of the fault (*culpa*); hence, Deuteronomy 25:2 says, “According to the measure of the sin shall the measure also of the lashes be.” But the Law established unequal punishments for certain equal faults. For instance, Exodus 22:1

says, “The thief shall restore five oxen for one oxen and four sheep for one sheep.” Also, certain sins that are not very grave are punished by severe punishments—e.g., in Numbers 15 a man was stoned because he had gathered wood on the Sabbath. Again, in Deuteronomy 21 it is commanded that an unruly son should be stoned for small transgressions, viz., for spending his time in revelry and feasting. Therefore, punishments were not appropriately instituted in the Law.

**Objection 10:** As Augustine says in *De Civitate Dei* 21, “Tully writes that there are eight forms of punishment recognized in the laws, viz., fines (*damnum*), incarceration (*vincula*), scourging (*verbera*), retaliation (*talio*), public disgrace (*ignominia*), exile (*exilium*), death (*mors*), and servitude (*servitudo*).”

Some of these were established under the Old Law: fines, as when a thief is fined five times or four times as much as he has stolen; incarceration, as when Numbers 15:34 commands, with respect to someone, that he be incarcerated; scourging, as when Deuteronomy 25:2 says, “If they see that he who has sinned deserves flogging, they shall lay him down, and shall make him to be scourged in their presence.” Likewise, the Law imposed public disgrace on anyone who refused to marry the wife of his deceased brother; she was to “take off his shoe and spit in his face.” Again, the Law imposed death, as is clear from Leviticus 20:9: “If anyone curses his father or mother, let him die the death.” Again, the Law imposed the punishment of retaliation, with Exodus 21:24 saying, “An eye for an eye, a tooth for a tooth.” Therefore, it was inappropriate for the Law not to impose the other two forms of punishment, viz., exile and servitude.

**Objection 11:** There ought not to be a punishment unless there is guilt. But brute animals cannot have guilt. Therefore, it is wrong for punishment to be imposed on them, as in Exodus 21:29 (“An ox shall be stoned if it kills a man or a woman”) and Leviticus 20:16 (“If a woman has sexual relations with any beast, she shall be killed along with the beast”). So, then, it seems that things pertaining to the common life of men with one another were inappropriately directed under the Old Law.

**Objection 12:** In Exodus 21:12 the Lord commanded that homicide should be punished by the death of a man. But the death of a brute animal counts for much less than the death of a man. Therefore, the punishment for homicide cannot be adequately replaced by putting a brute animal to death. Therefore, it was wrong for Deuteronomy 21:1-4 to command that “when the corpse of a slain man is found and no one knows who is guilty of the murder ..... the elders of the nearest city shall take from the herd a heifer that has not drawn a yoke or plowed the ground, and they shall bring her into a rough and stony valley that has never been plowed or sown, and there they shall cut off the head of the heifer.”

**But contrary to this:** Psalm 147:20 counts it as a special blessing that “He has not done thus for every nation, and He has not made His judgments known to them.”

**I respond:** In *De Civitate Dei* 2 Augustine cites the following passage from Tully: “A people is a the union of a multitude brought together by consent to the law and by their common welfare.” Hence, it pertains to the notion of a people that the interaction of men with one another should be directed by precepts of law that are just.

Now there are two types of interaction that men have with one another: One type is effected by the authority of the rulers, and the other type is effected voluntarily by private persons. Since everyone’s will is such that it has the capacity to oversee what is subject to its power, it has to be by the authority of the rulers, to whom men are subject, that judgments between men are enacted and that punishments are imposed on evildoers. By contrast, possessions are subject to the power of private persons, and so with respect to these possessions they are able to interact with one another voluntarily, e.g., in buying, selling, making gifts, and other activities of this sort.

Now the Law gave adequate direction with respect to both types of interaction.

For instance, the Law established judges, as is clear from Deuteronomy 16:18 (“You shall appoint judges and magistrates at all its gates, that they might judge the people with just judgment”). Again, the

Law instituted a just order of judgment, as when Deuteronomy 1:16-17 says, “Make a just judgment, regardless of whether the person is a citizen or a stranger; there will be no difference of persons.” Again, as is clear from Exodus 23:8 and Deuteronomy 16:19, the Law removed an occasion for unjust judgment by forbidding judges to accept gifts. Again, as is clear from Deuteronomy 16:6 and 19:15, it fixed the number of witnesses at two or three. Again, as will be described below, the Law established fixed punishments for various crimes.

With respect to possessions, on the other hand, as the Philosopher says in *Politics* 2, it is best for possessions to be divided among the people, and for their use to be partly communal and partly up to the will of those who possess them. These three points were laid out in the Law.

First, the possessions themselves were divided among the individuals. For instance, Numbers 33:53-54 says, “I have given the land for a possession, and you shall divide it among you by lot.” And since, as the Philosopher points out in *Politics* 2, many cities are ruined by disparities in possessions, the Law applied a threefold remedy for regulating possessions. First, the Law stipulated that possessions should be divided equally according to the number of men; hence Numbers 33:54 says, “You shall give a larger part to the more and a smaller part to the fewer.” The second remedy is that one’s possessions do not fall to others in perpetuity but revert to their former owners after a fixed period, so that shares of the possessions do not become mixed up with one another. The third remedy, aimed at removing confusion of the sort just mentioned, is that the relatives of those who die succeed them in ownership: in order, first, the son; second, the daughter; third, the brothers; fourth, the father’s brothers; fifth, any other relative. And to preserve shares of the possessions, the Law further stipulated in Numbers 36:6 that women who inherit should marry men of their own tribe.

Second, the Law stipulated to what extent the use of things would be communal. First, with respect to *taking care of things*, Deuteronomy 22:1 says, “You shall not pass by if you see your brother's ox or his sheep going astray; but you shall bring them back to your brother,” and likewise for other possessions. Second, with respect to *fruits*, it was generally allowed, for instance, that anyone, having entered his friend’s vineyard, could licitly eat of the fruit, as long as he did not take any fruit away with him. Next, with respect to *poor people in particular*, according to Leviticus 19:9 and Deuteronomy 24:19, the leftover sheaves should be left behind for them, as well as the leftover fruit and bunches of grapes; and according to Exodus 23:11 and Leviticus 25:4, anything grown in the seventh year should be given to them.

Third, the Law regulated the transfer of possessions by those who owned them. One sort of transfer was a *pure gift*. Deuteronomy 14:28-29 says, “Every third year you shall separate off another tithe, and the Levite and the stranger and the orphan and the widow shall come, and they shall eat and be filled.” By contrast, the other sort of transfer was a transfer *with advantageous compensation*—as, for instance, through selling and buying, through leasing and hiring, and through loans and safekeeping, and there are fixed rules in the Law about all of these.

Hence, it is clear that the Old Law appropriately directed the common life of the people.

**Reply to objection 1:** As the Apostle says in Romans 13:8, he who loves his neighbor has fulfilled the Law, since all the precepts of the Law, especially the ones directed toward one’s neighbor, seem to be ordered toward the goal of men loving one another. Now what proceeds from this love is that men share their goods with one another. For as 1 John 3:17 says, “If someone sees his brother suffering from want and closes off his affection from him, then how does the love of God abide in him?” And so the Law intended to make men accustomed to sharing their goods easily with one another, just as the Apostle likewise commands the rich “to give readily and share with others” (1 Timothy 6:18).

Now someone is not quick to share if he does not tolerate his neighbor’s taking something modest from him without any great loss on his part. And so the Law stipulated that someone entering his neighbor’s vineyard is permitted to eat of the fruit there—though he is not permitted to carry any fruit

away, lest this become an occasion for inflicting a large loss on his neighbor and thereby disturbing the peace. Among disciplined people, the taking of a little does not disturb the peace, but rather strengthens friendship and makes men accustomed to being quick to share.

**Reply to objection 2:** The Law did not stipulate that women should have succession with respect to their father's goods unless there were no male children. In such a case it was necessary that the succession pass to the women in order to console the father, to whom it would have been a grave blow if his inheritance were going to pass in its entirety to outsiders.

However, according to Numbers 26:7-8, the Law did apply a due precaution in this matter, commanding that women who succeeded to their father's inheritance should marry within their own tribes, so that the shares of the tribes would not get mixed up with one another.

**Reply to objection 3:** As the Philosopher says in *Politics 2*, the regulation of possessions contributes greatly to the preservation of a city or nation. Hence, as he himself points out, in certain Gentile cities there was a rule that "no one could sell a possession except to compensate for an obvious loss" (*nisi pro manifesto detrimento*). For if possessions were sold indiscriminately, then it could happen that all the possessions would end up with just a few people, making it necessary for the city or region to be emptied of inhabitants. And so in order to remove this danger, the Old Law directed matters in such a way that men's needs might be satisfied by permitting the selling of possessions up to a certain point in time, and yet it removed the danger in question by commanding that at a set point in time the possessions that had been sold should revert to the seller. The Law set things up in this way so that the shares would not get mixed up with one another, but instead there would always be the same determinate division of goods among the tribes.

However, since urban houses were not divided by lot, the Law permitted them to be sold in perpetuity in the same way that mobile goods were. For the number of houses in a city had not been mandated in the same way that the Law had mandated a set measure of possessions which could not be added to. Rather, the number of houses in a city could be increased. By contrast, houses that were not in a city but in a village "that has no walls" (Leviticus 25:31) could not be sold in perpetuity. For houses of this sort are constructed only for purposes related to cultivation and for the safekeeping of possessions. And so the Law appropriately established the same rule for both.

**Reply to objection 4:** As has been explained, the Law's intention was to make men accustomed through its precepts to assisting one another promptly with necessities, since this is especially conducive to friendship. And it mandated such promptness in assisting not only with respect to those goods that are given away freely and without qualification, but also with respect to those goods that are given as loans, since assistance of this sort is the more frequent and the more necessary for the majority of people.

Now the Law prescribed this promptness of assistance in a number of ways:

First, as Deuteronomy 15 shows, the Law prescribed that they should show themselves willing to lend and that they should not withdraw from this practice when a year of remission was approaching.

Second, the Law prescribed that they should not burden the one to whom they lend either with usurious interest or by taking as collateral something that is altogether necessary for his life, and it prescribed that if such things have been taken, they should immediately be given back. For Deuteronomy 23:19 says, "You shall not lend money to your brother unto usury." And Deuteronomy 24:6 says, "You shall not take the lower or upper millstone as collateral, since he has pledged his life to you." And Exodus 22:26 says, "If you take your neighbor's garment as collateral, you shall give it back to him before sunset."

Third, the Law forbade them to be unmannerly in exacting payment. Hence Exodus 22:25 says, "If you lend money to my poor people who live among you, you shall not be exacting with them like an extortioner." And it is because of this that Deuteronomy 24:10-11 likewise says, "When you demand of your neighbor anything that he owes you, you shall not go into his house to take away the collateral, but

you shall stand outside and he shall bring out to you what he has”—this because one’s home is his safest refuge, and thus it is offensive to a man that his own house should be invaded, and also because the Law does not allow a creditor to take the collateral he wants, but rather allows the debtor to give what he needs the least.

Fourth, the Law prescribed that every seventh year debts would be entirely remitted. For it was probable that those who could easily repay their debts would do so before the seventh year and would not defraud their lender without cause. However, if they were altogether unable to repay, then cancelling the debt was owed to them out of love, for the same reason that it should have been given to them from the beginning because of their need.

As regards borrowed animals, the Law prescribed that if, because of the negligence of the borrower, the animals died or were injured in his absence, then he should be forced to make restitution. On the other hand, if the animals died or were injured while he was present and diligently caring for them, then he was not forced to make restitution—especially if they had been rented out for a fee. For they might likewise have died or been injured in the same way under the lender’s care (*apud mutuantem*), and so as long as the borrower succeeded in preserving the animal, the lender would already be profiting from the loan, and it would not be a gratuitous loan. This rule had to be observed especially in cases where the animals were rented out for a fee, since in such cases the lender received a set fee for the use of the animals. Hence, the lender was not to get anything extra by way of restitution for the animals—unless there was negligence on the part of the one entrusted with the animals. On the other hand, if the animals were not rented out for a fee, then the lender could have a just claim for at least as much compensation as the use of the dead or injured animal could have been rented out for.

**Reply to objection 5:** The difference between something that is lent (*mutuum*) and something that is deposited for safekeeping (*depositum*) is that what is lent is handed over for the benefit of the one to whom it is lent, whereas what is deposited for safekeeping is handed over for the benefit of the one who deposits it. And so in certain cases one was more constrained to give back what had been lent than to give back what had been deposited for safekeeping.

What was deposited for safekeeping could be lost in two ways.

First, through an *unavoidable* (i.e., natural) cause, as when an animal deposited for safekeeping died or was disabled, or through an *extrinsic* cause, as when an animal deposited for safekeeping was captured by enemy forces or was eaten by a beast. In this last case, however, one was obliged to return the remains of the slain animal to its owner, whereas in the previous cases one was not obliged to return anything, but was obliged only to take an oath in order to clear away any suspicion of fraud.

The second way in which something deposited for safekeeping could be lost was through an *avoidable* cause, viz., theft. In such a case the guardian was obliged to make restitution if the theft occurred because of negligence on his part. However, as has been explained, one who received an animal on loan was obliged to make restitution even if the animal died or was disabled in his absence. For it took a lesser degree of negligence to make a borrower liable than someone holding a thing in safekeeping, who was liable only in the case of theft.

**Reply to objection 6:** Laborers who sell their services are poor and seek their daily sustenance by their labors. And so the Law was provident in prescribing that a wage laborer should be paid immediately, lest he fall short of food. By contrast, those who rent out other items tend to be well-off, and they do not need the rental fee for their daily sustenance. Thus, the arguments in the two cases are not parallel.

**Reply to objection 7:** Judges are appointed among men to clear up possible ambiguities concerning justice among men.

Now there are two ways in which a matter can be ambiguous:

First, it can be ambiguous *to ordinary people* (*apud simplices*). And to remove this sort of doubt,

Deuteronomy 16:18 mandates that judges and magistrates should be appointed for each tribe in order to judge the people with just judgments.

In the second way, something can be doubtful *even to the experts (apud peritos)*. And so to remove this sort of doubt, the Law prescribed that everyone should return to the principal place which had been chosen by God and in which resided both (a) the *high priest*, who was to clear up doubts concerning the ceremonies of divine worship, and (b) the *high judge* of the people, who was to clear up things relevant to judicial matters among men—just as even in our own time cases are sent from lower judges to higher judges because of appeals (*per appellationem*) or for consultation (*per consultationem*). Hence, Deuteronomy 17:8-9 says, “If you notice among you a difficult and ambiguous judgment and you see that the words of the judges within your gates vary among themselves, then go up to the place that the Lord chooses and you will come to the priests of the Levite race and to the one who is judge at that time.” Still, doubtful judicial matters of this sort did not come up very often, and so the people were not burdened because of this.

**Reply to objection 8:** In human affairs there can be no demonstrative and infallible proofs; rather, what suffices is conjectural probability of the sort that rhetoricians use for persuasion. And so even if it is possible for two or three witnesses to agree in a lie, it is nonetheless not easy for them to conspire in this way or likely that they will do it. And so their testimony is accepted as the truth—especially if they do not vacillate in their testimony or come under suspicion in other ways. Moreover, in order that it might not be easy for witnesses to deviate from the truth, the Law prescribed that witnesses should be examined with extreme care and severely punished when caught in a lie (Deuteronomy 19:16).

However, there was a reason for specifying this number of witness, viz., to signify the infallible truthfulness of the divine persons, who are sometimes numbered as two, with the Holy Spirit as the link between them, and sometimes expressed as three—as Augustine points out in commenting on John 8:17 (“In your Law it is written that the testimony of two men is true”).

**Reply to objection 9:** Severe punishment is imposed not only because of the seriousness of a fault but for other reasons as well:

First, because of the quantity of the sin, since, all other things being equal, the more quantity a sin has, the more severe is the punishment due for it.

Second, because of the sin’s degree of habituation, since men are not easily drawn away from habitual sins except through severe punishments.

Third, because of a high degree of concupiscence or pleasure associated with the sin, since men are not easily drawn away from such sins except through severe punishments.

Fourth, because of the ease with which the sin was committed and the ease of hiding the sin, since when sins of this sort are made public, they should be more severely punished in order to instill fear in others.

As far as the quantity of a sin is concerned, there are four degrees to be noted, even with respect to one and the same deed:

The first occurs when someone commits a sin *involuntarily*. For in such a case, if he acts altogether involuntarily, he is totally exempt from punishment. For instance, Deuteronomy 22:25 says that a girl who is assaulted in the fields is not liable to death, since “she cried out and no one was there to help her.” On the other hand, if someone commits a sin that is in some sense voluntary but he sins out of weakness—as, for instance, when someone sins from passion—then the sin is lessened and the punishment should be lessened to the degree that this judgment about it is true. A possible exception occurs when, for the sake of the common welfare, the punishment, as explained above, is made more severe in order to deter men from sins of this sort.

The second degree of sin occurred when someone sinned *through ignorance*. In such a case guilt was in some way assigned because of the sinner’s negligence in finding something out. Yet instead of

being punished through the mediation of the judges, the sinner expiated his own sin through sacrifices; hence, Leviticus 4:2 says, “The soul that sins through ignorance .....”. However, this should be understood to mean ignorance of a fact and not ignorance of a divine precept, which everyone was expected to know.

The third grade of sin occurred when someone sinned *out of pride*, i.e., out of a fixed choice or out of fixed malice. In such a case he was punished in proportion to the quantity of his crime (*delictum*).

The fourth grade of sin occurred when someone sinned *through impudence (protervia)* and *obstinance (pertinacia)*. In such a case, as a rebel and destroyer of the Law’s ordinance, he was to be wholly destroyed (*omnino occidendus erat*).

Accordingly, the reply to the objection is that in punishing theft, the Law took into consideration the frequency with which something could happen. So for the theft of things that could easily be guarded from thieves, the thief was to make twofold restitution. On the other hand, since sheep grazed in the fields, they could not be easily guarded from theft, and so it happened that sheep were very often taken by theft. Hence, the Law imposed a greater punishment, viz., that four sheep were to be given over for every one stolen. Again, oxen are even more difficult to guard, since they are kept in the fields and they do not graze in herds like sheep do. And so the Law imposed a still greater punishment in their case, viz., that five oxen were to be given back for every one stolen. (I mean this except for times when the same animal was found alive with the thief, in which case the restitution was only twofold, as with other thefts; for there could have been a presumption that the thief was thinking about returning the ox and that this is why he had preserved its life.)

An alternative reply, in accord with a Gloss [on Exodus 22:1], is that an ox has five uses—viz., being sacrificed, plowing, being eaten, giving milk, and providing a hide with many uses—and that this is why five oxen were given back for every one stolen. A sheep, on the other hand, has four uses—viz., being sacrificed, being eaten, giving milk, and providing wool.

Now an unruly son was put to death not because he ate and drank, but because of his contumaciousness and rebellious spirit, which were always punished by death, as was explained above.

On the other hand, someone who gathered wood on the Sabbath was stoned as a violator of the Law, which, as was explained above (q. 100, a. 5), prescribed that the Sabbath should be observed in order to call to mind one’s faith in the creation of the world. Thus, he was put to death as one who was unfaithful (*tamquam infidelis*).

**Reply to objection 10:** The Old Law imposed the death penalty in the case of very serious crimes, viz., sins against God, homicide, kidnapping (*furtum hominum*), disrespect for parents, adultery, and incest. For the theft of other things [besides human beings], the Law imposed fines as punishment. For striking or mutilating someone it imposed the punishment of retaliation, and likewise for the sin of false testimony. In the case of other lesser sins, the Law imposed the punishment of scourging or public disgrace.

Now the Law did impose servitude as a punishment in two cases. The first was when, during the seventh year of remission, someone who was a servant refused to take advantage of the Law in order to depart as a free man. In such a case, the punishment imposed on him was that he would remain a servant in perpetuity. Second, servitude was imposed on a thief when he was unable to make restitution (see Exodus 22:3).

However, the Law did not prescribe absolute exile as a punishment. For it was only among this people that God was worshiped, whereas all the other peoples had been corrupted by idolatry. Hence, if someone were absolutely excluded from this people, it would be an occasion of idolatry for him. And so 1 Kings 26:19 reports that David said to Saul, “They are cursed in the sight of the Lord who have cast me out this day, so that I might not dwell in the inheritance of the Lord, saying: ‘Go, serve strange gods’.”

Still, there was a certain limited exile (*particulare exilium*). For Deuteronomy 19:4 says that if

someone struck down his neighbor unknowingly and was proved to have had no hatred against him, then he was to flee to one of the cities of refuge and remain there until the death of the high priest. He was allowed to return to his home at that time because in the face of a general loss for the whole people, particular grievances were normally put to rest, and so those close to the dead man were less likely to kill the man in question.

**Reply to objection 11:** It was commanded that brute animals should be killed not because of any fault on their part, but as a punishment for their owners, who had not safeguarded the animals from sins of the sort in question. And so an owner was punished more if his ox had already gored people yesterday and the day before, in which case the present danger could have been obviated, than if the ox gored someone all of a sudden.

An alternative reply is that the animals were killed out of hatred for the sin and in order that men should not be struck with terror upon seeing those animals.

**Reply to objection 12:** As Rabbi Moses points out, the literal reason for the precept in question was that the killer was often from a neighboring city. Hence, the killing of the heifer was done to investigate the unsolved homicide (*homicidium occultum*). This was accomplished in three ways: (a) first, the elders of the city swore that they would overlook nothing in guarding their highways; (b) second, the owner of the heifer suffered a loss when the animal was killed, and if the murder was cleared up first, then the animal would not be killed; (c) third, the place where the heifer was killed remained uncultivated. And so, in order to avoid losses of both sorts, the men of the city would be quick to make the murderer known if they knew who he was, and it would rarely happen that no talk or opinions were voiced about the matter.

An alternative reply is that this was done to instill terror, out of hatred for homicide. For the killing of a heifer, which is a useful animal and very strong—especially a heifer that had not yet labored under the yoke—signified that (a) even if the one who had committed the murder was himself useful and strong, he should nonetheless be killed, and that (b) he should die a cruel death, which was signified by cutting the animal’s head off, and that (c) he should be cut off from human society as someone vile and contemptible, which was signified by the fact that the heifer, once having been killed, was left in a wild and uncultivated place to rot away.

Now the mystical reason is that the heifer taken from the herd signifies the flesh of Christ, which did not bear the yoke, since He never sinned. Nor did the heifer ever plow the ground, i.e., Christ never admitted of the stain of rebellion. Now the fact that the heifer was killed in an uncultivated valley signified the disgraceful death of Christ, through which all sins are washed away and through which the devil is shown to be the author of murder.

### Article 3

#### Were appropriate judicial precepts given with respect to outsiders?

It seems that appropriate judicial precepts were not given with respect to outsiders (*extranei*):

**Objection 1:** In Acts 10:34-35 Peter says, “In truth I have come to see that God is not a respecter of persons, but, in every nation, whoever fears Him and does justice is acceptable to Him.” But those who are acceptable to God should not be excluded from the assembly of God (*ecclesia Dei*). Therefore, it was inappropriate for Deuteronomy 23:3 to command, “The Ammonites and the Moabites, even after the tenth generation, shall not enter into the assembly of the Lord forever,” while, on the contrary, in the very same place Deuteronomy 23:7 commands with respect to certain of the nations, “You shall not hate the Edomite, because he is your brother, or the Egyptian, because you were an alien in his land.”

**Objection 2:** What is not within our power is not deserving of punishment. But that a man is a eunuch, or that he was born of a prostitute, is not within his power. Therefore, it was inappropriate for Deuteronomy 23:1-2 to command, “The eunuch and he who was born of a prostitute shall not enter the assembly of the Lord.”

**Objection 3:** The Old Law mercifully prescribed that aliens were not to be persecuted; for Exodus 22:21 says, “You shall not molest the alien or persecute him; for you yourselves were likewise aliens in the land of Egypt,” and Exodus 23:9 says, “You shall not make trouble for the alien, for you know the souls of aliens, because you were likewise aliens in the land of Egypt.” Therefore, it was inappropriate for Deuteronomy 23:19 to permit them to lend money to aliens at a usurious rate.

**Objection 4:** Men are much closer to us than trees are. But the closer something is to us, the more we ought to show it the affection of love and the effects of love—this according to Ecclesiasticus 13:19 (“Every beast loves what is like it; so every man likewise loves what is closest to himself.”) Therefore, it was inappropriate for the Lord to command in Deuteronomy 20:5-7 that they were to slay everyone in the captured enemy cities, and yet were not to cut down the fruit trees.

**Objection 5:** Everyone should, in accord with virtue, prefer the common good to his own private good. But in a war conducted against enemies, it is the common good that is sought. Therefore, it was inappropriate for Deuteronomy 20:5-7 to prescribe that when battle was imminent, certain men were to be left at home—for instance, whoever had just built a new house, whoever had planted vines, and whoever had just betrothed a wife.

**Objection 6:** No one ought to profit (*commodum reportare*) from his own faults. But it is a man’s own fault that he is fearful and fainthearted, since this is contrary to the virtue of fortitude. Therefore, it was inappropriate for the fearful and fainthearted to be excused from the hardships of battle.

**But contrary to this:** In Proverbs 8:8 Divine Wisdom says, “All my words are just, there is nothing wicked or perverse in them.”

**I respond:** The relations of men with outsiders can be of two types, viz., *peaceful* and *hostile*. And the Law contained appropriate precepts in directing both types.

There are three ways in which the Jews had occasion to have *peaceful* relations with outsiders:

The first was when outsiders passed through their territory as travelers. The second way was when they came to their land to live as aliens. And with respect to these two ways, Exodus 22:21 says, “You shall not make trouble for the alien,” and Exodus 23:9 says, “You shall not molest the traveler.”

The third way was when outsiders wished to be admitted fully into their fellowship and rites. And a certain order was followed in such cases. For they were not immediately received as citizens—just as, according to the Philosopher in *Politics* 3, in certain nations it was prescribed that no one would be counted as a citizen except those whose grandparents or great-grandparents had been citizens. The reason for this is that if outsiders, upon arriving, were immediately admitted into deliberations about matters pertaining to the people, many dangers could arise. For instance, outsiders, not yet having a firm love for the public good, might strive for certain goals in opposition to the people. And so the Law prescribed that those from nations that had some connection with the Jews—viz., the Egyptians, among whom they had been born and raised, and the Edomites, who were the children of Esau, the brother of Jacob—would be received into the fellowship of the people in the third generation. By contrast, others, since they were from nations that had maintained hostile relations with the Jews, e.g., the Ammonites and Moabites, would never be admitted into the fellowship of the people, whereas the Amalekites, who had been even more hostile to them and had no blood relations with them, would be counted as perpetual enemies. For Exodus 17:16 says, “God will war against Amalek from generation to generation.”

As for *hostile* relations with outsiders, the Law likewise handed down appropriate precepts.

First, it established that war should be justly undertaken; for instance, Deuteronomy 20:10

prescribes that when they go out to attack a city, they should first make an offer of peace.

Second, the Law prescribed that they should courageously fight the war once it had been undertaken, putting their trust in God. And to make sure that this precept would be observed in the best way, the Law prescribed that when battle was imminent, a priest should strengthen them by promising them God's help.

Third, the Law commanded that impediments to battle should be removed by leaving at home certain men who could present problems.

Fourth, the Law prescribed that they should moderate the advantage of victory by sparing the women and children and also by not cutting down the fruit trees of the region.

**Reply to objection 1:** The Law did not exclude the men of any nation from the worship of God and from what pertains to the salvation of the soul. For Exodus 12:48 says, "If an alien wants to dwell with you and to keep the Passover of the Lord, all his males shall first be circumcised, and then he shall celebrate the rite in the prescribed manner, and he shall be as one born in the land."

However, in temporal matters, not everyone was immediately admitted into the common life of the people, and this for the reason explained above. Rather, some, viz., the Egyptians and the Edomites, were admitted in the third generation, whereas others were permanently excluded out of hatred for their past sins, e.g., the Moabites, Ammonites, and Amalekites. For just as one man is punished for a sin he has committed in order that others who see this might be afraid and refrain from sinning, so too a nation or city can be punished for some sin in order that other nations and cities might refrain from a similar sin.

However, it was possible, in light of some act of virtue, that someone should be admitted by dispensation into the fellowship of the people. For instance, Judith 14:6ff. says that Achior, the leader of the children of Ammon, "was joined to the people of Israel, and all of his descendants." And the same is true of the Moabite Ruth, who was a woman of virtue. (Still, one could reply here that the prohibition in question extended only to men and not to women, who were not citizens absolutely speaking.)

**Reply to objection 2:** As the Philosopher says in *Politics* 3, there are two ways in which someone is said to be a citizen, viz., (a) absolutely speaking and (b) in a qualified sense.

A citizen absolutely speaking is one who is able to do those things that properly belong to citizens, e.g., to voice his views or make judgments (*dare consilium vel iudicium*) in the assembly of the people.

On the other hand, a citizen in the qualified sense is someone who lives in the city, including lowly people (*viles personae*) and children and the aged, who are not fit to have power in matters pertaining to the common welfare.

Thus, bastards, because of their lowly origin, were excluded from the assembly, i.e., from the tribunal of the people (*collegium populi*), up to the tenth generation.

The same was true of eunuchs, who were unable to have the honor that is owed to fathers—and especially within the people of the Jews, among whom the worship of God was preserved by carnal generation. For as the Philosopher points out in *Politics* 2, even among the Gentiles those who had begotten many sons were given special honor. However, as regards the things having to do with God's grace, eunuchs were not separated off from the others—just as, in the way explained above, outsiders were not separated off, either. For Isaiah 56:3 says, "Let not the son of the outsider that adheres to the Lord speak, saying, 'The Lord will divide and separate me from His people.' And let not the eunuch say, 'Behold, I am a dry tree.'"

**Reply to objection 3:** It was not the Law's intention that usurious interest should be taken from outsiders; rather, the Law permitted this, as it were, because of the Jews' inclination toward greed and in order that they might relate more peaceably to the outsiders from whom they were making a profit.

**Reply to objection 4:** A distinction must be drawn with respect to the citizens of enemy lands.

Some of them lived far away and did not belong to those cities that had been promised to the Jews; and in these cities, once conquered, the men who had fought against the people of God were slain,

whereas the women and children (*infantes*) were spared.

However, in the nearby cities, which had been promised to them, the command was that everyone should be killed because of their prior iniquities, and it was to punish those iniquities that the Lord sent the people of Israel as the executioners of divine justice. For Deuteronomy 9:5 says, "Because they have acted wickedly, they are destroyed at your coming."

Now it was commanded that the fruit trees be spared because of their usefulness to that people to whose rule the city and its territory were to be subject.

**Reply to objection 5:** There were two reasons why those who had built new houses, planted new vines, or betrothed a wife were exempted from battle.

The first is that the things a man has just acquired or is just about to acquire are such that he normally loves them more and, as a result, is fearful of losing them. Hence, it was likely that because of this love such men would fear death more and so would fight less courageously.

The second reason is that, as the Philosopher says in *Physics* 2, "It seems to be a misfortune, when one is close to acquiring some good, if he is afterwards prevented from doing so." And so in order that the close survivors would not be more upset by the death of these men who had not gotten to possess the goods awaiting them, and in order that the people would likewise not be horrified, men of this sort were sequestered from the danger of death by being removed from battle.

**Reply to objection 6:** The fearful were left at home not in order that they themselves might thereby have an advantage, but in order that the people might not suffer a disadvantage from their presence. For because of their fearfulness and their taking flight others might likewise be incited to become fearful and take flight.

#### Article 4

##### Did the Old Law issue appropriate precepts with respect to household members?

It seems that the Old Law did not issue appropriate precepts with respect to household members (*circa domesticas personas*):

**Objection 1:** As the Philosopher says in *Politics* 1, a servant, in everything he is, belongs to his master. But what belongs to someone is owed to him perpetually. Therefore, it was inappropriate for Exodus 21:2 to command that servants should go free in the seventh year.

**Objection 2:** Just as an animal, like a donkey or an ox, is a possession of its owner, so too with his servant. But Deuteronomy 22:1-3 prescribes that animals are to be returned to their owners if they are discovered after having gone astray. Therefore, it is inappropriate for Deuteronomy 23:15 to command, "You shall not hand over a servant to his master if he flees to you."

**Objection 3:** Divine law ought to move one toward mercy even more than human law does. But under human law someone who treats his male or female servants with excessive harshness is severely punished. Now the harshest treatment seems to be that which results in death. Therefore, it is inappropriate for Exodus 21:20-21 to mandate, "If someone beats his male or female servant with a rod .... and the servant survives for a day ..... then he shall not be subject to punishment, since the money belongs to him."

**Objection 4:** As *Politics* 1 and 3 say, the rule of a master over his servant is different from the rule of a father over his child. But it pertains to the rule of a master over his servant that the master is allowed to sell his male or female servant. Therefore, it was inappropriate for the Law to permit someone to sell his daughter as a handmaid or servant.

**Objection 5:** A father has power over his son. But one who has power over a sinner is in a position to punish him. Therefore, it was inappropriate for Deuteronomy 21:19 to prescribe that a father should take his son to the elders of the city to be punished.

**Objection 6:** In Deuteronomy 7:3 the Lord prohibited them from making marriages with aliens; and as is clear from Esdra 10, He commanded that marriages with aliens that had already been contracted should be dissolved. Therefore, it was inappropriate for Deuteronomy 21:10 to permit them to take women captured from alien nations as their wives.

**Objection 7:** As is clear from Leviticus 18, the Lord commanded that certain degrees of consanguinity and kinship were to be avoided in the making of marriages. Therefore, it was inappropriate for Deuteronomy 25:5 to command that if a man died without children, then his brother should marry his wife.

**Objection 8:** Just as there ought to be the greatest degree of familiarity between man and wife, so too there should be the firmest trust. But this cannot be if marriage is dissoluble. Therefore, it was inappropriate for the Lord to permit a man to dismiss his wife with a written decree of divorce (*repudium*) and to prescribe further that he could not take her back as his wife again (Deuteronomy 24).

**Objection 9:** Just as a wife can break trust with her husband, so too a servant can break trust with his master, and a son with his father. But no sacrifice was instituted in the Law as part of the investigation of a servant's harming his master or of a son's harming his father. Therefore, it seems superfluous for the Law to have established, in Numbers 5, a "sacrifice of jealousy" to investigate a wife's adultery.

Therefore, it seems that the Law did not issue appropriate precepts for household members.

**But contrary to this:** Psalm 18:10 says, "The judgments of the Lord are true, justified in themselves."

**I respond:** As the Philosopher says in *Politics* 1, the relation of household members with one another has to do with daily actions that are ordered toward the necessities of life. Now the life of man is preserved in two ways.

First, it is preserved in the *individual*, viz., insofar as numerically the same man remains alive. In the preservation of life in this sense a man is assisted by exterior goods on the basis of which he has food, clothing, and other things of this sort that are necessary for life. And a man needs servants to administer these goods.

Second, the life of man is preserved in the *species* through generation, and for this a man needs a wife in order that he might generate children from her.

So, then, a domestic community involves three sorts of relations, viz., master to servant, man to wife, and father to children. And the Old Law issued appropriate precepts with respect to all of them.

As regards *servants*, the Law prescribed that they should be treated with moderation, both (a) with respect to their work, so that they were not to be burdened with too much work—and this is why Deuteronomy 5:14 says, "The Lord commanded that on the Sabbath day your male and female servants should rest, even as you do"—and also (b) with respect to the punishments imposed on them, so that the Law prescribed that those who mutilated their servants must let them go free (Exodus 21:26-27). The Law prescribed this same freedom in the case of a female servant whom someone took as his wife. Again, the Law specifically prescribed that servants who themselves were members of the Jewish people should be freed in the seventh year, along with everything they had brought with them, including their clothes (Exodus 21:2). In addition, Deuteronomy 15:13 prescribed that they be given provisions for their journey.

As regards *wives*, the Law contained prescriptions about taking a wife. Specifically, as Numbers 36:6 has it, the Law prescribed that they take wives from their own tribe—and this in order that the

shares of the tribes not be conflated with one another. Again, as Deuteronomy 25:5-6 has it, the Law prescribed that a man was to marry the wife of his brother who had died without children—and this in order that someone who could not have descendants according to carnal origin might at least have descendants by a sort of adoption, so that the memory of the dead man would not be totally erased. Again, the Law prohibited them from marrying certain persons, viz., (a) alien women, because of the danger of their being seduced [by alien ways of life], and (b) women who were close relatives, because of the natural reverence owed to them. The Law also prescribed how wives, once taken in marriage, should be treated. Specifically, as Deuteronomy 22 has it, the Law commanded that anyone who falsely accused his wife of a crime should be punished. Again, as Deuteronomy 21 has it, a child was not to suffer harm because of a husband's hatred for his wife. And, as is clear from Deuteronomy 24, a husband was not to persecute his wife because of his hatred for her, but instead he was to dismiss her with a written decree of divorce. Again, in order that even greater love should draw the spouses closer together from the beginning, the Law prescribed that when someone had recently taken a wife, no publicly necessary task should be enjoined on him, so that he might be free to rejoice with his wife.

As regards *children*, the Law prescribed that fathers should give their children discipline by instructing them in the faith. Hence, Exodus 12 says, "When your children ask you, 'What is this rite?', you are to say, 'It is the Passover of the Lord.'" Likewise, the Law prescribed that they should instruct their children in morals. Hence, according to Deuteronomy 21:20, fathers had to say [to the elders], "He dislikes hearing our warnings; he gives himself over to revelry and debauchery."

**Reply to objection 1:** Since the children of Israel had been freed by the Lord from servitude and had thereby been assigned to serve God, the Lord did not want them to be servants in perpetuity. Hence, Leviticus 25:39 says, "If your brother, constrained by poverty, sells himself to you, you shall not oppress him with the service of servants, but he shall be like a wage laborer and a migrant worker. For they are my servants, and I brought them out of the land of Egypt. Let them not be sold as servants." And so since they were not servants absolutely speaking, they were to be let free.

**Reply to objection 2:** This commandment should be understood to be speaking of a servant whose master is seeking to kill him or to enlist his help in some sin.

**Reply to objection 3:** As far as injuries (*laesiones*) inflicted on servants are concerned, the Law seems to have taken into consideration whether or not it was certain [that the injury had resulted from the beating].

If it was certain, then the Law applied a penalty. More specifically, the prescribed penalty for mutilation was the loss of the servant, who was to be granted his freedom, whereas the prescribed penalty for death was that of a murderer, in cases where the servant died while being beaten at the hand of his master.

On the other hand, if it was not certain but had some appearance of being so (*aliquam apparentiam haberet*), then the Law did not impose a punishment in the case of one's own servant, e.g., when the beaten servant did not die immediately, but after a few days. For in that case it was uncertain whether or not he had died from the beating. For if his master had beaten a free man in such a way that the latter did not die immediately but "walked around again with the help of his staff" (Exodus 21:19), then he would not be guilty of homicide, even if the man died afterwards. Still, the master was obligated to assume the expenses which the beaten servant had paid to the doctors. However, this did not apply in the case of a master's own servant, since whatever the servant had—even the very person of the servant—was, as it were, the master's possession. And the reason given for his not being subject to a fine was that the servant's money belonged to him.

**Reply to objection 4:** As has been explained, no Jew could possess another Jew as a servant absolutely speaking; rather, he was a servant in a qualified sense—something like a wage laborer—for a certain period of time. And it is in this sense that the Law permitted someone, under the duress of

poverty, to sell his son or his daughter. This is also shown by the very wording of the Law, which says, “If a man sells his daughter as a servant, she shall not go forth as the handmaids are wont to” (Exodus 21:7). In this same way, a man was able to sell not only his child but even himself, more as a wage laborer than as a servant—this according to Leviticus 25:39-40 (“If, compelled by poverty, your brother sells himself to you, you shall not oppress him with the servitude of servants, but he will be like a wage laborer or migrant worker.”)

**Reply to objection 5:** As the Philosopher says in *Ethics* 10, a father’s authority extends only to the power to admonish, and he does not have the sort of coercive power by which someone rebellious and stubborn can be constrained. And so in this case the Law commanded that a stubborn child should be punished by the rulers of the city.

**Reply to objection 6:** The Lord prohibited them from taking foreign women in marriage because of the danger of seduction, i.e., lest they be led into idolatry. And He prohibited this especially with regard to women from those nations that lived close by, where they would be more likely to retain their own rites.

On the other hand, if the woman was willing to abandon idolatrous worship and to make the transition to worship under the Law, then she could be taken in marriage—as is clear from the case of Ruth, whom Boaz took in marriage. Hence, in Ruth 1:16 she had said to her mother-in-law, “Your people will be my people, and your God my God.” And so it was permitted to take a captive women in marriage only if she first shaved off her hair, cut her nails, cast off the clothes in which she had been captured, and mourned for her father and mother—all of which signified the everlasting rejection of idolatry.

**Reply to objection 7:** As Chrysostom says in *Super Matthaëum*, “Because death was an unmitigated evil among the Jews, who did everything with a view to the present life, the Law prescribed that children should be born to the dead man through his brother, and this constituted a certain mitigation of death. However, no one other than his brother or a close relative was ordered to marry the wife of the dead man, since otherwise a child who was to be born from this union would not be regarded as the son of the man who had died. Moreover, an outsider would not be obliged, in the way a brother would be, to sustain the household of the man who had died. For it was a just thing for the brother to do this because of his relationship with the dead man.”

From this it is clear that in taking his brother’s wife as his own, he was acting in the place of his dead brother.

**Reply to objection 8:** The Law permitted divorcing one’s wife not because this was just absolutely speaking, but because of the Jews’ hardness of heart, as our Lord said in Matthew 19:8. We will have to talk about this more fully when we deal with the sacrament of Matrimony.

**Reply to objection 9:** Wives break the trust of matrimony through adultery, and they do it both easily, because of the pleasure, and covertly, because, as Job 24:15 says, “The eye of the adulterer observes darkness.”

However, it is not the case that a similar explanation holds for the case of a son with respect to his father or a servant with respect to his master. For unfaithfulness of this latter sort proceeds not from a desire for pleasure but rather from malice. Nor can it remain hidden in the way that the infidelity of an adulterous woman does.