

Sacred Scripture and law according to Villey: “Man, who made Me a judge or arbitrator over you?” (Luke 12, 14)

Micael Martins Teixeira

FCT Scholarship, CEDIS (Research Center on Law and Society),
Nova Law School, Universidade Nova de Lisboa
micaelmartins Teixeira@gmail.com

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Abstract

One of the most interesting aspects of Villey’s work is the quest to find the proper scope of application of the Gospel message vis-à-vis the legal order. The Gospel is directed at the internal dispositions on men, given that Jesus’ commands are not translatable into concrete written commands but are rather only grasped by the command of love of God and of neighbor as oneself. This is the “fulfillment of the law” proclaimed by Christ and dependent on God’s grace (Holy Ghost), manifested in the theological virtues. Yet, the need to establish order in any society, accomplished by stating rights and duties between man and neighbor, implies the proclamation of such statements. These exist in the Old Testament but not in the New: “judicialia praecepta (...) sunt evacuata per adventum Christi” (ST, I, II, 104, 3, co.). Moreover, formulating rights and duties, moral and legal, is a matter of properly exercising the cardinal virtues, common to all men — as they are based in natural human reasoning —, regardless of the fact that they are the recipients of God’s grace. As such, these matters are left to human judgement and cannot be based on the Gospel: “non cadunt sub praecepto novae legis sed relinquuntur humano arbitrio” (ST, I, II, 108, 2, co.). This understanding has a clear gospel basis, specially in Christ’s answer to the man who asked Him to order his brother to divide the inheritance: “Man, who made Me a judge or arbitrator over you?”.

Keywords: Villey, Sacred scripture, law, virtue, human reason

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1 INTRODUCTION

I shall begin this paper by referencing a Gospel passage, as it can be seen as the motto or maxim that best summarizes the main idea of Villey's thought that I shall try to convey. In the Gospel of Luke, as the crowd gathers around Jesus, a man from the crowd asks Him "teacher, tell my brother to divide the family inheritance with me"¹ (Luke 12, 13), to which Jesus answers "man, who made me a judge or arbitrator over you?" (Luke 12, 14), and then told the crowd the parable of the rich fool who had abundant harvests and went on to build bigger and bigger barns to store the grains with the intention to "relax, eat, drink, be merry", only to die before being able to enjoy his riches.

It is well-known, in this parable, the moral message against covetousness and for generosity and gratitude with regard to each blessing of each day. What is perhaps less notorious is the fact that such moral teaching is preceded and was sparked by a solely legal request: the division of an inheritance. Such is, indeed, the only occasion, in all gospels, in which Jesus is confronted with the need to resolve a legal matter. Also less notorious, and perhaps intriguing, is Jesus' direct answer the request: "man, who made me a judge or arbitrator over you?". Indeed, before exposing his moral teaching, which is, without a doubt, the main point of Jesus' message in this Gospel chapter, He offers a bold response to the legal demand of the man from the crowd, stating that no one had named Him a judge, and thus it is not adequate to come to Him with legal requests, as His doctrine is outside the scope of such matters.

Such stance of Jesus might be a source of amazement, given the Catholic Church's, and other Christian Churches', stance on legal matters, namely one that pushes for change of legal status on various subjects in order for them to align with Christian moral doctrine. Especially noteworthy on this regard is the social doctrine of the Catholic Church. How then are we to understand Christ's clear and bold response?

Answering this question is a matter of correctly determining the proper scope of application of Sacred Scripture vis-à-vis the legal order. In other, perhaps simpler, terms, understanding Christ's response is a matter finding the answer to the following questions: is it adequate to base statutes, as well as court decisions, in Sacred Scripture? If not — as Christ seems to suggest —, why? If so, in what way? The quest to understand these issues is, in my opinion, one of Michel Villey's most interesting aspects of his work, to which he has dedicated chapter 6 of his last book: *Une doctrine sociale peut-elle être ou non tirée de l'Écriture Sainte?*².

The aim of this paper is, then, to answer those questions by analyzing how Villey understands the relations between sacred scripture and the legal order,

in an attempt to succinctly explain his reasoning and fully reveal its coherence and depth, as well as to clarify some cloudy aspects, and develop others that one can only find *in ovo* in Villey's work. I shall state, as a notice to the reader, that Villey's last book is probably his most Thomistic work, which explains the various references to the *Summa* found hereinafter; many cannot be found in the referenced chapter but seem to me to be good sources of clarification and development of Villey's thought.

In order to archive such aim, it is necessary to start by explaining what, in Villey's thought, is the scope of application of Sacred Scripture, in order to ascertain whether legal precepts can be found in, or be determined by induction from, it. To this end, Villey proposes to follow the division between Old and New Testament.³ I shall start, as is befitting, by the Old.

2 THE PRECEPTS OF THE OLD TESTAMENT

In the Old Testament, one can find three kinds of precepts, that is, three kinds of concrete behavioral rules, each pertaining to a specific matter: moral, ceremonial and judicial (*Summa Theologica*⁴, I-II, q. 99, a. 4, co., *secunda pars*). The first ones consist of behavioral rules regarding general moral rectitude in temporal matters, they are a translation of the will for the good of the other in a society, promoting acts of justice. The prime examples can be found in many commandments of the Decalogue (such as the prohibition against killing or stealing), but there are many others, such as the ones that aim for the care of the poor among the Hebrew people: "if there is among you anyone in need, a member of your community in any of your towns within the land that the Lord your God is giving you, do not be hard-hearted or tight-fisted toward your needy neighbor. You should rather open your hand, willingly lending enough to meet the need, whatever it may be. Be careful that you do not entertain a mean thought, thinking, "the seventh year, the year of remission, is near," [the Old Law commanded that debts were to be remitted every seven years] and therefore view your needy neighbor with hostility and give nothing." (Deut. 15, 7-9). The second ones consist of rules relating to the worship of God, not by the interior acts of the mind — believing, hoping and loving, to which the theological virtues correspond — but through "certain external works, whereby man makes profession of his subjection to God"⁵ (ST, I-II, q. 99, a. 3, co.). The last ones consist of rules which aim at the realization of fairness in the specific matter of interpersonal relationships which deal with the attribution of rights and duties regarding the distribution or the exchange of things, persons and actions among members of a society⁶ (ST, I-II, q. 99, a. 4, co. *prima pars*; vid. also II-II, q. 61, a. 3, co. *prima pars*). Many examples can be found in the books of Exodus, Leviticus and Deuteronomy, mostly rules concerning criminal

and contractual matters; an interesting example: “when someone steals an ox or a sheep, and slaughters it or sells it, the thief shall pay five oxen for an ox, and four sheep for a sheep. (...) When the animal, whether ox or donkey or sheep, is found alive in the thief’s possession, the thief shall pay double.” (Ex. 22, 1). Here we can find a “whole system”⁷ of law: “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” (ST, I-II, q. 104, a. 4, co.).

The purpose of all these precepts, moral, ceremonial and judicial, is to make men, with regard to temporal matters — such as the help of the poor or the fair exchange of goods, as per the examples given —, more like God in order for men to befriend God, since *similitudo sit ratio amoris*, likeness is the reason for love (ST, I-II, q. 99, a. 2, co.): divine law, in the Old Testament, has a pedagogical function (ST, I-II, q. 99, a. 6, co.), as said St. Paul, “the law was our disciplinarian until Christ came” (Gal. 3, 24).

This seems to point to the fact that legal (judicial) precepts are a part of Christian sacred scripture (albeit most of them being misplaced in today’s society), and that it would be possible to use them to justify legal regulations or court decisions. Such conclusion is, however, a very hasty one. To understand why one must start by inquiring the reason for the existence of legal precepts in the Old Testament. A clue is to be found right in the cited *quaestio* of the *Summa* in which St. Thomas acknowledges that there are judicial precepts in the Old Testament. In it (ST, I-II, q. 99, a. 4, co. *prima pars*), he states that “it belongs to the Divine law [the precepts contained in Scripture] to direct men to one another [hence the moral and judicial precepts] and to God [hence the ceremonial ones]” and further states that “each of these [the said precepts] belongs in the abstract to the dictates of the natural law, (...)”. St. Thomas states then that the precepts in the Old Testament belong to the principles of natural law, this being the tendencies naturally present in all human beings that are part of God’s Providence (*lex aeterna*), the primary one being the tendency for what is good, present in the whole of man, in every of its most basic qualities (ST, I-II, q. 91, a. 2, co.), from which, using our natural human reason, one can stem various secondary principles: “as a *being*, all men tend to self-conservation (...); As an *animal*, man tends to perpetuate itself and to educate its offspring (...); Provided with [the gift of advanced] language, men tend to social living (...)”⁸.

As such, the precepts of the Old Testament are not self-justified but rather find their justification in natural reasoning applied to man’s natural tendencies, namely the tendency for social living, which justifies the judicial precepts. This seems odd, since the Old Testament is divine law, containing the precepts God established for his chosen people, which should suffice for them to be self-justified. A solution can be found right in the same mentioned *quaestio* which explains

the existence of judicial precepts in the Old Testament: “each of these [the said precepts] belongs in the abstract to the dictates of the natural law, (...): yet each of them has to be determined by Divine or human law, because naturally known principles are universal”. In other words: the precepts contained in the Old Testament are concrete determinations for specific circumstances, and these characteristics presuppose that an operation of concretization has been made based on the aforementioned universal principles of natural law⁹, and it can be either an operation carried out by God or by men.

The first is the case of divine law, such as the Old Testament. This means that God has specified what it means to have a proper social living among men, unsurprisingly according to natural law, in specific circumstances. What are those circumstances? They are those of God’s elect Hebrew people, as such people lived in the context of the Old Testament, until the coming of Christ. “Such task that had been so badly fulfilled by lawmakers of pagan nations [in ancient times, naturally], is assumed by God for his elect people. He has endowed them with a marvellous equipment of positive laws”¹⁰, as those that I have mentioned as contained in the books of Exodus, Leviticus and Deuteronomy. This divine feat, as with all God’s interventions, is aimed at the fulfilment of man’s last end, happiness, only possible through man’s reconciliation with God (since happiness is the complete satisfaction of one’s desires, only possible in God: *ST*, I-II, q. 2, a. 8, co.) broken after original sin, and, thus, is a part of God’s salvation plan in its “dynamic dimension”¹¹: the economy of salvation. Divine prudence, which is inimitable by men since it is that kind of prudence which commands the ordering of things towards an end based on perfect and complete knowledge (rendering useless the human need to take counsel in prudential determinations) — *i.e.* providence (vid. *ST*, I, q. 22, a. 1, ad. 1) —, has determined that the judicial (as well as the moral) precepts of the Old Testament were the most adequate concretizations of natural law for the promotion of salvation with regard to the social living of God’s elect people, in their own circumstance. The divine root of these precepts does not affect their rational base, since “though to take counsel may not be fitting to God, from the fact that counsel is an inquiry into matters that are doubtful, nevertheless to give a command as to the ordering of things towards an end, the right reason of which He possesses, does belong to God” (*ST*, I, q. 22, a. 1, ad. 1). To conclude: God “only” concretized, according to divine prudence, the judicial precepts, but their base is rational. This conclusion, as we shall see in the last part of this paper, will allow us to understand in what way can those precepts be used in legal and jurisdictional reasoning. For now, the main question, however, remains unanswered: there are judicial precepts in the Old Testament, so ought one use them to justify legal regulations or court decisions? Let’s continue this quest by turning to the changes that the coming of Christ brought about, which can be found in the New Testament.

3 THE NEW LAW

The circumstance of there being an elect people of God has been overcome. With the coming of Christ, a great change of the state of the Hebrew people has happened: they are no longer God's elect people, nor is there any other people elected by God, the distinction between Jew and Gentile has been abolished. This meant that divine law is no longer to be directed at only one particular people, but to all people of all nations in any time, and such is the scope of the New Testament. As a consequence, the judicial precepts contained in the Old Testament can no longer be "determinations" adequate for all people, as there is no concrete place and time circumstances for the general principles of natural law to be rationally determined to. Owing to this reason, those judicial precepts are not part of Christian divine law: "the judicial precepts did not bind forever, but were annulled by the coming of Christ (...) when the state of that people [Hebrews] changed with the coming of Christ, the judicial precepts lost their binding force" (ST, I-II, q. 104, a. 3, co.).¹²

If there are no longer any binding judicial precepts in the Old Testament, shall one be able to find any in the New? Certainly, the purpose for them to exist in the former applies to the latter: there continues to be a need, with regard to temporal matters, for God to make men more like God in order for men to befriend Him, as *similitudo sit ratio amoris* is a timeless truth, far from being fulfilled with regard to the *similitudo Dei*. On this regard, "New Law is not distinct from the Old Law: because they both have the same end, namely, man's subjection to God; and there is but one God of the New and of the Old Testament" (ST, I-II, q. 107, a. 1, co.). But the way through which that purpose is pursued changes radically on the New Testament. This matter is not particularly clear in Villey's aforementioned chapter 6, and I will thus try to clarify, with the help of the St. Thomas' *Summa*.

Indeed, all the precepts of the Old Testament, especially the moral ones, were established with the aim of likening man to God. As is clear from many books of the Old Testament, especially the prophetic ones, the chosen people of God failed to achieve such aim, as they narrate many instances of moral corruption. In the light of this failure, God's providence has evolved in the prosecution of the same aim, changing the strategy: instead of focusing on establishing precepts written on "stone", a new Law has been cast upon men, a Law written in the "heart" of men (Hebrews 8, 8-10). Instead of external precepts, which could be expressed in words and which applied exclusively to temporal matters (ST, I-II, q. 99, a. 6, co.), God has acted internally, on the inner dispositions of men, by virtue of His grace, as a much straighter way to direct men to such aim.¹³ This means that God's grace, His very Spirit, the Holy Ghost, to which we "become receivers of this grace through God's Son made man, Whose humanity grace filled first, and thence flowed forth to us" (ST, I-II, q. 108, a. 1, co., *prima pars*), leads men

directly to God by the infusion of the theological virtues, faith, hope and charity, which, in turn, renders men capable of doing good works, of living a life of moral rectitude — something that a written external law was unable to do. The focus of the New Law, of the New Testament, is then to regulate the dispensation of Grace — what leads to it (*ST*, I-II, q. 108, a. 1, co., *secunda pars* and a. 2, co., *prima pars*) —, as well as the use of Grace — what to do with it (*ST*, I-II, q. 108, a. 2, co., *secunda pars*).¹⁴ With regard to the dispensation of Grace, it is achieved through the administration of the Sacraments, which is the basis of the possibility of an order of concrete precepts that regulate such administration according to the New Testament: canon law.¹⁵ As for the use of Grace, it is done “by means of works of charity”, which “pertain to the moral precepts, which also formed part of the Old Law”, aimed at moral rectitude, as is the case of the example mentioned *supra* with regard to the duty to lend to the poor what they need. As such, the use of Grace is performed on the very same kind of external acts that the moral precepts of the Old Testament prescribed.

Indeed, the use of Grace by works of charity is always done by external acts that concretize the willing of the good, *i.e.* love, for neighbor, since in loving charitably, as a result of the infusion of charity, one’s love of neighbor is an act of love for God: “the aspect under which our neighbor is to be loved, is God, since what we ought to love in our neighbor is that he may be in God. Hence it is clear that it is specifically the same act whereby we love God, and whereby we love our neighbor. Consequently, the habit of charity extends not only to the love of God, but also to the love of our neighbor” (*ST* II-II, q. 25, a. 1, co., *in fine*). As a result, the New Testament does not add anything new with regard to the works done by the use of Grace: they are the very same kind of works included in the moral precepts of the Old Testament (*ST*, I-II, q. 100, a. 2, co.), which deal with temporal matters. The novelty lies in the impetus — Grace — which renders men able to execute such works and not on their content.¹⁶ The change lies not on what is written but rather on where the Law is written: from the stone (man’s exterior) to the heart (man’s interior).

As we have seen before, the moral precepts of the Old Law find the justification of their content in the rational prudential reasonings of God for His elect people (*ST*, I-II, q. 100, a. 1, co.). Given that there is no more any elect people of God, the scope of the New Law, the law of Grace, being universal, those precepts, written for such people, cannot apply *per se*, but only for this circumstantial reason of there being no more any elect people, since we have also just seen that the New Law implies the execution, by the result of the use of Grace, of exactly the same kind of works. This is why, for example, the aforementioned moral precept of forgiving debts every seven years is no longer necessarily applicable. As there are no concrete moral precepts expressly determined in the New Testament, Christian divine law does not contain the operation of concretization of

the aforementioned universal principles of natural law needed to formulate concrete moral precepts. But such operation can and should also be undertaken by men, through human reason, as there continues to be a need to ascertain moral acts in concrete temporal situations, and this is exactly what is to be done after the coming of Christ: “it is through human reason that we are directed to works of virtue, for it is the rule of human action, as stated above (Question [19], Article [3]; Question [63], Article [2]). Wherefore in such matters as these there was no need for any precepts to be given besides the moral precepts of the Law, which proceed from the dictate of reason” (*ST*, I-II, q.108, a. 2, ad.1). In order for this operation to be correctly made Grace is not necessary¹⁷, it is rather a matter of correctly exercising the cardinal virtues, namely (human) prudence, as it provides the means for a correct determination of what best to do in a particular circumstance.

This implies that, as the moral precepts of the Old Testament are also based on reason, and not on the fact of them being prescribed by God, some of them, due to their more general formulation, might still be applicable: “the New Law had no other external works to determine, by prescribing or forbidding, except the sacraments, and those moral precepts which have a necessary connection with virtue, for instance, that one must not kill, or steal, and so forth” (*ST*, I-II, q.108, a. 2, co., *in fine*). Again, the prime example is the moral precepts of the Decalogue. Taking into account these considerations, one can adequately understand Villey’s bold claim that one cannot rightly affirm the existence of Christian morals, of a kind of morality exclusive for Christian believers¹⁸, since “for saint Thomas Christians have the same “morals” as other men”¹⁹, *i.e.* the moral based on human prudential reasoning concretizing natural law (“the very name [natural] suggests, *profane*”²⁰). In light of this I cannot but partake on Villey’s sentiment: “I share the embarrassment of a Bishop or of a Jesuit Priest when asked about the pill or about surrogate mothers by the mass media”²¹. To be clear, this understanding is not opposed to Christians or Christian Churches defending a social morality, but only to them doing so with a Sacred Scripture ground.

This is the way moral precepts are to be considered under Christian Sacred Scripture: the ones included in the Old Testament have not been altogether annulled by the coming of Christ, but they are not all applicable either, the criterium being natural human prudential reasoning. But what about judicial precepts, the *raison d’être* of this paper? We have seen that, owing to their concrete formulation — none of them present a more general scope, contrary to the case of the moral precepts of the Decalogue —, after the coming of Christ and the consequence of there being no more any elect people, they have all been annulled. However, their fate is similar to the moral ones: since divine prudence established them in the Old Testament, so too after the coming of Christ their determination is a matter

of correctly exercising the cardinal virtues, namely human prudence directed at ascertaining concrete juridical precepts, which provide guidance on concrete situations concerning the fair allocation of rights and duties regarding the distribution or the exchange of things, persons and actions among members of a society. Following and building upon Villey's claim that there is no Christian morals, so too, and for the same reasons, there is no Christian Law: "since these determinations [the judicial precepts] are not in themselves necessarily connected with inward grace wherein the [New] Law consists, they do not come under a precept of the New Law, but are left to the decision of man" (*ST*, I-II, q.108, a. 2, co.).

And thus, we find ourselves right where we have begun. The message of Christ's Gospel is one that clearly conveys the idea that the judicial precepts have no place in it, since Christ refuses to divide the inheritance of the man from the crowd — "Man, who made Me a judge or arbitrator over you?" — and suggests that it is a matter for man to deal with. Indeed, in a different Gospel passage, Christ commands that temporal legal obligations should be complied: "give to the emperor the things that are the emperor's, and to God the things that are God's" (Luke 20, 25, Mark 12, 17 and Matthew 22, 21). More than just denying that there is a Christian Law, we can find in these passages the grounds of a distinctive feature of Christianity vis-à-vis other monotheistic religions: that the Law that governs temporal matters should "reunite men from diverse confessions" by being "based on reasons accessible to everyone, and not on specifically Christian ones"²².

4 RELEVANCE OF THE OLD LAW AFTER THE COMING OF CHRIST

And yet, not questioning the validity of this conclusion, Villey cunningly reminds us²³ that the judicial precepts of the Old Testament are not to be viewed as useless for the rendering of fair decisions, even nowadays. The basis of this surprising discovery is, again, to be unearthed from the *Summa*. And the key to understand it lies in ascertaining one of the functions of God's elect people within the economy of salvation. The biblical tale of the story of Israel is to be understood as an account of the relation between God and His people, with God trying for various times to instruct his people to a life of moral rectitude, showing his people the bad consequences of not following His good commands, and, conversely, the good effects of following them. Such instruction, most notably, came in the form of the Old Covenant, in which the three kinds of precepts, moral, ceremonial and judicial, are to be found, but it also came by means, for example, of the messages of the prophets. The story of the Hebrew people related in the Old Testament testifies the dangers of not following these instructions.

This panorama points to a very important role of God's chosen people: its history is to serve as an example to everyone — now that there is no more chosen

people — of the consequences of obeying and of disobeying God: “These things [the sins of the chosen people] happened to them to serve as an example, and they were written down to instruct us, on whom the ends of the ages have come” (1 Cor. 10, 11); “the entire state of that people [the chosen people], who were directed by these precepts, was figurative” (*ST I-II*, q. 104, a. 2, co.), *i.e.*, exemplary, in the sense that the history of the chosen people prefigures the fate of all people who follow or who distance from God’s instructions.

The judicial precepts were also part of such divine instruction, whose disrespect originated bad consequences. As such, they are to be seen as exemplary of what a rationally based and prudently determined fair and equitable set of judicial precepts for a particular society can be. St. Thomas speaks of a “consequently” exemplar or figurative nature of the judicial precepts, since when they were created they were not merely exemplar, as they were to be regarded as applicable judicial precepts, but after the coming of Christ and the dispensation of divine Grace by the Holy Spirit to potentially everyone, there is no more any chosen people to whom God’s instructions, including the judicial precepts, are directed. Thus, after Christ’s coming, the judicial precepts are no longer applicable as such (as stated above) but assume a new nature: they have become a prefiguration, an example of what a fair and equitable set of judicial precepts can be for a particular society: “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” (*ST I-II*, q. 104, a. 3, co.).

Therefore, the judicial precepts are not to be applied to today’s societies since “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” (*ST I-II*, q. 104, a. 3, ad. 1), and the state of mankind, in today’s societies, is certainly completely different from that of ancient Israel. This conclusion is very clearly understood when one is confronted with many of these precepts, such as those that prescribed the punishment, sometimes the death penalty, for offences against religion²⁴, since, precisely, in ancient Israel the idea of a legal order that was free from a divine justification, as the one that originated with the coming of Christ, had not been conceived yet. And the same can be said of those judicial precepts (although this qualification is debatable) that contain punishments designed to atone the evil done by the criminals, especially in the case of substitutionary atonement²⁵, since the definitive act of substitutionary atonement has been accomplished by Christ’s passion.

But the principles, the *ratio legis* which underlie many of the Old Testament’s judicial precepts are still of value, even today. Recuperating the example given above: the animal thief is due a higher payment (to the victim and not the state)

if he has sold or killed the animals than in if he has just filched them, and the payment is always proportional to the quantity stolen. This may be because killing or selling them denotes that “the thief had made a deliberate attempt to cover his traces”²⁶. The *ratio* being that the penalty should be proportional to the person’s guilt and repenting. And such *ratio* serves today’s needs of legal punishment, as did the ones of ancient Israel. Another relevant example concerns the legal qualification of theft: “the Bible makes theft a matter of tort between the offender and the victim and obligates the criminal to make restitution directly to the individual wronged. This is arguably more just and more cost effective than the modern system that makes theft a crime against the state in which the offender pays his debt to ‘society’ through prison but not directly to the victim, unless the victim sues the offender in a separate (civil) court”²⁷. This way of understanding the judicial precepts of the Old Testament is still understudied and presents good potential for academic analysis, since “one of the places where the author of the *Summa* approaches with longer extent law and politics is in his Treaty of the Old Law”²⁸.

Finally, one more, and extremely important lesson is to be learnt from the judicial precepts of the Old Testament. Differently from modern legal codifications, which tend to be created and understood as exhaustive statutory frameworks of a certain legal matter (criminal law, consumer law, labor law, etc.), the said precepts were meant to be understood not as exhaustive regulations but rather as illustrative cases that show what a fair and equitable decision, in the society of ancient Israel, would be. It could happen that the case *sub judice* is very similar (not exactly the same, as no two cases are the same) to the one described in the precepts, and, if so, the decision should, in principle, follow the consequence included in the precept, but many cases did not have a clearly applicable precept to regulate them. Thus, judges would have to determine a fair and equitable decision, not by applying the precepts subsumptively but rather by regarding them as models from where to draw inspiration for such determination.²⁹ This approach to legal rules, although contrary to most contemporary legal thinking which overvalues certainty and predictability, is actually much more apt to guide judges to fair decision, since it forces them to consider the particularities of the cases, moving them away from a mechanical way of reasoning which tends to uniformize decisions, resulting in unjust verdicts. In fact, this biblical approach to legal methodology is actually the same that some contemporary legal scholars have proposed, under the name of a topical or dialectical legal methodology, such as Theodor Viehweg³⁰ or, precisely, Michel Villey³¹.

NOTES

1. *New Revised Standard Version Catholic Edition*, 1991, online at the Bible Gateway, <http://biblegateway.com>. All Bible quotations made hereinafter are of this edition.
2. M. Villey, *Questions de Saint Thomas sur le Droit et la Politique*, Puf, Paris 1987, pp. 93-110.
3. M. Villey, *Questions de Saint Thomas*..., p. 100-1.
4. Hereinafter referred to by the abbreviation *ST*.
5. St. Thomas Aquinas, *The Summa Theologica*, Translated by Fathers of the English Dominican Province, Benziger Bros. edition, 1947, online at: <https://dhspriory.org/thomas/summa/>. All quotations made hereinafter to the *Summa* are of this edition.
6. Vid. M. Villey, *Questions de Saint Thomas*..., pp. 121-7.
7. M. Villey, *Questions de Saint Thomas*..., p. 105.
8. M. Villey, *Questions de Saint Thomas*..., p. 98. The translation is mine, as are all Villey's English quotations hereinafter.
9. It is important to stress that this operation of concretization based on the very general human principle of aiming for what is good (for what best corresponds to the realization of human nature), namely for (peaceful) social living, cannot not be a rule-based deductive operation, but rather one that prudently discerns what is more adequate for the actualization of such principles in concrete time and space circumstances. For Villey's take on this issue vid. M. Villey, *Questions de Saint Thomas*..., p. 99.
10. M. Villey, *Questions de Saint Thomas*..., p. 100.
11. M. Villey, *Questions de Saint Thomas*..., p. 100.
12. M. Villey, *Questions de Saint Thomas*..., p. 102.
13. To the relevant question of why God has not chosen this path as His first option, the answer is, again, contained in the divinely prudential reasonings of the economy of salvation, beautifully and rigorously explained by St. Thomas: "Three reasons may be assigned why it was not fitting for the New Law to be given from the beginning of the world. The first is because the New Law, as stated above (Article [1]), consists chiefly in the grace of the Holy Ghost: which it behooved not to be given abundantly until sin, which is an obstacle to grace, had been cast out of man through the accomplishment of his redemption by Christ (...) A second reason may be taken from the perfection of the New Law. Because a thing is not brought to perfection at once from the outset, but through an orderly succession of time; thus one is at first a boy, and then a man. And this reason is stated by the Apostle (Gal. 3:24,25): 'The Law was our pedagogue in Christ that we might be justified by faith. But after the faith is come, we are no longer under a pedagogue.' The third reason is found in the fact that the New Law is the law of grace: wherefore it behooved man first of all to be left to himself under the state of the Old Law, so that through falling into sin, he might realize his weakness, and acknowledge his need of grace. This reason is set down by the Apostle (Rm. 5:20): 'The Law entered in, that sin might abound: and when sin abounded grace did more abound.'" (*ST* I-II, q. 106, a. 3, co.).
14. I will ignore, on the grounds of irrelevance for this paper, the other kind of external acts that follow from the New Testament, those that "ensue from the promptings of grace": vid. *ST*, I-II, q. 108, a. 1, co., *tertia pars*.
15. M. Villey, *Questions de Saint Thomas*..., p. 104.

16. A good example of the effect of Grace in order to render one able to live a life of virtue is the case of Matt Talbot, the Irish laborer who, after having been a very heavy drinker to the point of spending all his money on the pub, changed his life radically and suddenly stopped drinking, not to ever drink again, starting a life of virtue. For a brief description and analysis of this case with regard to the interesting and relevant matter of infused cardinal virtues vid. Michael Sherwin, *Infused Virtue and the Effects of Acquired Vice: A Test Case for the Thomistic Theory of Infused Cardinal Virtues*, «The Thomist», 73 (2009), pp. 35 and ff.
17. Although Grace might also have such effect: “we must say that for the knowledge of any truth whatsoever man needs Divine help, that the intellect may be moved by God to its act. But he does not need a new light added to his natural light, in order to know the truth in all things, but only in some that surpass his natural knowledge. And yet at times God miraculously instructs some by His grace in things that can be known by natural reason, even as He sometimes brings about miraculously what nature can do” (*ST* I-II, q. 109, a. 1, co., *in fine*).
18. It is important to clarify that acts specifically practiced by Christians, such as fasting, praying or alms-giving, aim to create in man the necessary inner disposition to receive Grace as a result of a life oriented to God and, thus, are not the fulfillment of moral precepts, as they are not always external — such as prayer —; they do not envisage temporal matters but God; and they do not proceed from human reason but from the infusion of the theological virtues, even if externally they may be coincident with acts that are the fulfillment of moral precepts and, thus, proceed from human reason, such as helping a poor person (alms-giving). Naturally, such coincidence is a mere possibility, as, in many cases, living the theological virtues goes beyond what human reason would require and, in such cases, the infusion of cardinal virtues becomes a necessity (although it is always a very important advantage): “For instance, in the consumption of food, the mean fixed by human reason, is that food should not harm the health of the body, nor hinder the use of reason: whereas, according to the Divine rule, it behooves man to “chastise his body, and bring it into subjection” (1 Cor. 9:27), by abstinence in food, drink and the like. It is therefore evident that infused and acquired temperance differ in species” (*ST*, I-II, q. 63, a. 4, co.).
19. M. Villey, *Questions de Saint Thomas*..., p. 103.
20. M. Villey, *Questions de Saint Thomas*..., p. 98.
21. M. Villey, *Questions de Saint Thomas*..., p. 103.
22. M. Villey, *Questions de Saint Thomas*..., p. 104.
23. M. Villey, *Questions de Saint Thomas*..., p. 105.
24. Some examples can be found in Gordon Wenham’s article *Law and the Legal System in the Old Testament*, «Law, Morality and the Bible», edited by Bruce Kaye and Gordon Wenham, Illinois, Inter-Varsity Press, 1978: “false prophecy (Deut. 13:1f.); profanation of the sabbath (Num. 15:32ff.); blasphemy (Lev. 24:13ff.); idolatry (Lev. 20:2ff.); magic and divination (Ex. 22:18 ; cf. H17)” (p. 42).
25. Another example from Gordon Wenham, *Law and the Legal System*...: “in Deuteronomy 21:1-9 (...) a rite is prescribed to atone for the crime of an unknown murderer. The attempt to discover the murderer has proved futile, and therefore a calf is killed by a stream and various rites are performed” (p. 40).
26. Gordon Wenham, *Law and the Legal System*..., p. 44.

27. Joe M. Sprinkle *How Should the Old Testament Civil Laws Apply Today*, «Liberty University Law Review», 2, Issue 3, Article 12 (2008), pp. 926-7.
 28. M. Villey, *Questions de Saint Thomas...*, p. 105.
 29. Joe M. Sprinkle *How Should the Old Testament...*, p. 925.
 30. Theodor Viehweg, *Topica y Jurisprudencia*, translated by Luis Ponce de Leon, Taurus Ediciones, Madrid 1964, pp. 65 and ff.
 31. M. Villey, *Philosophie du droit*, Dalloz, Paris 2001, pp. 33-4, 191-212.
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