

RESEARCH ARTICLE

# Mitzvah mistranslated: Reimagining Aquinas' threefold division of 'Old Law'

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## Abstract

Thomas Aquinas argues that 'Old Law', comprised of the precepts found in the Hebrew Bible, should be divided into three types: moral, ceremonial and judicial. His system is meant to be instructive for Christian ethics, distinguishing between eternally, universally binding precepts relevant to Christians and other irrelevant or even forbidden ones. But Aquinas derives this threefold division from a mistranslated Vulgate passage from Deuteronomy where a singular noun, *mitzvah*, is translated as a plural noun: *praecepta*. Based on the original Hebrew, the verse actually supports a twofold division, not a threefold one. Aquinas' system also runs into issues when it comes to sorting the precepts. To fix the sorting, retain the instructive benefit, and shed the biblical tension, we ought to keep Aquinas' understanding of 'moral law', but discard the judicial and ceremonial categories in favour of one 'cultural law' category, in line with the popular Jewish philosophical division between *chukim* and *mishpatim*.

**Keywords:** Christian ethics; ceremonial law; Old Law; Old Testament; *Summa Theologiae*; Thomas Aquinas

Thomas Aquinas defines 'Old Law' as one category in a complex system of types of law, outlined in qq. 90–108 of the *Prima Secundae* of the *Summa Theologiae*. Together with 'New Law', it makes up 'Divine Law', which Aquinas posits that God set forth to bridge the gap between the outer edge of humans' finite capacity for moral reason (natural law) and God's perfect and ultimately unknowable morality (eternal law). Divine Law, then, subdivided into the categories of 'Old Law' and 'New Law', roughly corresponds to the two testaments of the Christian Bible, revealed first in Mosaic law and subsequently in the person of Jesus Christ. Aquinas argues that 'Old Law' should be divided into three types, each with its own set of conditions and applications, a division he justifies primarily through biblical exegesis.

The three types of 'Old Law' that he sets forth are moral, judicial and ceremonial. The first sections of this paper will evaluate Aquinas' case for this threefold division and find that he does not offer sufficient justification for his system outside the Hebrew Bible passages he cites as evidence for it. Then, I will analyse those passages and find that, due to a mistranslation of Deuteronomy 6:1 in the Vulgate from which Aquinas was

working, he misunderstands the texts on which he bases the argument. The original Hebrew text does not support a threefold distinction, but a twofold one. This revelation should inspire us to reimagine his threefold division of 'Old Law' as a twofold division while still attempting to retain its instructional benefit.

I will then attempt that reimagining and put forth a system that accomplishes Aquinas' main goals in dividing the 'Old Law'. A system that would satisfy Aquinas must be consistent with the relevant biblical text, but must also accomplish Aquinas' original end in dividing the 'Old Law': to be useful to Christians in determining which precepts from the Hebrew Bible they are obligated to keep and which (if any) they are forbidden to practice. Such a system must differentiate based on the common conditions that Aquinas attributes to 'universally binding' laws, and it must be practically functional for sorting the precepts of the Hebrew Bible. I will find that keeping Aquinas' differentiation between 'moral precepts' and 'others', while discarding his subdivisions of those 'others' into 'judicial law' and 'ceremonial law', retains the instructive benefit in Aquinas' system while shedding unnecessary conditions that cause tension with the biblical text from which Aquinas derives it.

### Aquinas' threefold division of 'Old Law'

Aquinas' three types of 'Old Law' are moral law, ceremonial law and judicial law, each of which contains many 'precepts'. This section will recount Aquinas' definitions of each of these categories and their implications for Christian observance.

Aquinas defines moral law by the following key properties: 1) it is a restatement of natural law, accessible to human reason; 2) its precepts have to do with virtue; and 3) each moral precept of the 'Old Law' can be reduced to a commandment in the Decalogue.<sup>1</sup> According to Aquinas, these conditions are mutually equivalent when it comes to all the precepts of the Hebrew Bible; if a precept meets any one of these, it necessarily meets the other two in Aquinas' estimation.

Moral law is the only one of the three categories of the 'Old Law' that Aquinas considers eternally and universally binding. As Ralph McInerny puts it, 'these are not merely rules for the Israelites but universal guidelines for all humanity, indicating that the moral dimension of the 'Old Law' remains binding under the New Covenant'.<sup>2</sup> This is how Aquinas' system of categorising the 'Old Law' fulfils its primary purpose of providing a framework for Christian ethics derived from the Hebrew Bible, which I will discuss further below.

Aquinas' second category is ceremonial law, which he defines as containing precepts concerning the determinations of divine worship.<sup>3</sup> He gives several examples of ceremonial precepts, which include ones involving sacrifices and others involving ritual purity for worship, including kosher dietary restrictions. Aquinas argues that because they are determinations of worship, ceremonial precepts are also professions of faith, and that they profess faith specifically in a coming messiah.<sup>4</sup> Because for a Christian the

<sup>1</sup>Thomas Aquinas, *Summa Theologiae* [hereafter *ST*] 1/2.100.1–3, in *S. Thomae Aquinatis Doctoris Angelici Opera Omnia Iussu Impensaue Leonis XIII P. M. edita*, vols. 4–12 (Rome: Leonine Commission, 1888–1906). All translations are my own.

<sup>2</sup>Ralph McInerny, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas* (Washington, DC: The Catholic University of America Press, 1997), p. 45.

<sup>3</sup>*ST* 1/2.99.3.

<sup>4</sup>*ST* 1/2.103.4.

Messiah has already come, to profess faith in a coming messiah would be a false profession of faith and a mortal sin. Thus, Aquinas holds that Christians cannot observe ceremonial precepts without committing mortal sin. This verdict carries significant implications both for Christian religiosity and for Christian theological attitudes toward Jewish Torah observance. I will discuss both implications in a later section of this article.

The third and final category of 'Old Law' is judicial law, which Aquinas defines as containing precepts related to human interactions. They are 'determinations of the justice to be maintained among men', and govern man-man relationships, the same way that ceremonial precepts govern man-God relationships.<sup>5</sup> According to Aquinas, these may be kept or not without committing mortal sin.

With Aquinas' system defined, we can now examine his case for it. The non-exegetical argument he offers comes in *Summa Theologiae* 1/2.99.5, where he claims that the three types of law as he defines them collectively account for every precept of the Hebrew Bible. As we will see in the precept-sorting section of this paper, this is simply untrue. There are many misfits: laws that meet the conditions of multiple categories or none at all. Aquinas gets around this issue by claiming that any misfits are not actually precepts, but can be mistaken for them.

Instead of precepts, Aquinas claims these misfits could be 'testimonies' (things set forth to indicate the authority of God the lawgiver, e.g. 'The Lord our God is one'), 'justifications' (rewards for those who observe the law and punishments for those who transgress) or 'commandments'. I agree that both testimonies and justifications can be excluded from the 'precept' designation. The third category – and the only one that bears on my argument – is commandments, which Aquinas excludes from the category of precepts owing to their not being absolute duties. Instead, commandments are just 'things which are better to be done'.<sup>6</sup> This could present an issue for my argument since a proponent of the threefold system could simply claim that any outliers are 'commandments' and not 'precepts', and it is difficult to argue the difference between 'must be done' and 'ought to be done' with no objective standard.

But thankfully, Aquinas gives us a way to differentiate between the two: he defines precepts as things God himself prescribes and commandments as things God prescribes through an intermediary. The representative example of a commandment he gives is found in Exodus 22:26: return a loaned garment before sunset. This order is relayed to the Israelites by Moses. Aquinas' standard for differentiating between commandments and precepts implies that all precepts – including ceremonial and judicial precepts – must be communicated firsthand by God, more directly than the 'commandment' of Exodus 22:26.

The problem is that most of the orders in the Torah come through Moses, including many that Aquinas explicitly categorises as precepts. For example, Aquinas lists among the ceremonial precepts those on abstinence from foods in Leviticus 11, but that chapter begins, 'The Lord said to Moses and Aaron, "Say to the Israelites:"' (vv. 1–2a). Moses and Aaron communicate these to the Israelites second hand, along with the rest of the ceremonial precepts that Aquinas lists in q. 101. Even some of the quotes Aquinas uses as examples of commandments are in the third person, e.g. 'to make for themselves fringes in the corners of their garments' (Num. 15:38).<sup>7</sup> If this directive were given

<sup>5</sup>ST 1/2.99.4.

<sup>6</sup>ST 1/2.99.5.

<sup>7</sup>Cited in ST 1/2.101.1.

directly by God himself, the text would instead read, ‘make for *yourselves* fringes in the corners of *your* garments’.

Because many of the rules Aquinas considers to be ‘precepts’ are given in the second-hand manner that Aquinas ascribes instead to ‘commandments’, his precept/commandment division is not consistent with his larger system. Thus, the strategy of calling any outliers to the threefold division ‘commandments’ instead of ‘precepts’ cannot resolve the tension with the biblical text. As Aquinas offers no further body paragraph arguments to support his threefold division, I will now turn to his argument based on the biblical evidence, which is found in the *sed contra* sections of q. 99.<sup>8</sup>

### The Vulgate’s mistranslation

In the *sed contra* sections of q. 99, Aquinas uses descriptions of the law found in Deuteronomy as evidence that a threefold division (viz., moral, ceremonial and judicial) is the proper categorisation of ‘Old Law’. The first verse he uses is Deuteronomy 4:13–14: ‘Ten words . . . [God] wrote on two tables of stone; and he commanded me at that time that I should teach you the ceremonies and judgments which you shall do’.

Aquinas contends that because the moral precepts are contained within the Ten Commandments, there must be precepts beyond moral ones, since otherwise Deuteronomy 4 would not have referenced the other categories of ceremonies and judgments. He is reading the verse with an implied ‘also’ (i.e. ‘God wrote the Ten Commandments, and also commanded other things’). To prove that the division of the things God so commanded should be threefold, Aquinas cites Deuteronomy 6:1, arguing, ‘It is written, “These are the precepts, and ceremonies, and judgments”: where “precepts” stands for “moral precepts” antonomastically. Therefore, there are judicial precepts besides moral and ceremonial precepts’.<sup>9</sup>

But, the original Hebrew text of Deuteronomy 4:13–14 and 6:1 supports a twofold division, not a threefold one. Aquinas is not to blame for this discrepancy; a mistranslation in the Vulgate from which he was working obscures the meaning of the latter verse in a way that supports his interpretation of both verses. Ultimately, his biblical argument fails due to this mistranslation.

Let us first consider Deuteronomy 6:1. The following are the original Hebrew, a Roman transliteration, the Vulgate translation and the King James English translation of the first half of the verse:

וְזוֹת הַמִּצְוֹת הַחֻקִּים וְהַמִּשְׁפָּטִים אֲשֶׁר צִוָּה יְהוָה אֱלֹהֵיכֶם לִלְמַד אֹתְכֶם

*V'zot ha'mitzvah, ha'chukim, v'ha'mishpatim, asher tzivah YHWH eloheychem l'lamed etchem.*

*Haec sunt praecepta et caerimoniae atque iudicia quae mandavit Deus Dominus vester ut docerem.*

<sup>8</sup>In the body paragraphs, Aquinas uses most of the space to establish that the Divine Law ought to contain precepts that meet the conditions of each category, based on his vision of divinity. These arguments do not form a case for the threefold division itself; one can accept that precepts meeting the conditions of each category are present and still take issue with the system overall.

<sup>9</sup>ST 1/2.99.4.

Now these are the commandments, the statutes, and the judgments, which the Lord your God commanded to teach you.

The three words that Aquinas takes as evidence for a threefold division of the law are the following:

Hebrew	המצוה ( <i>ham-miṣ-wāh</i> / <i>ha'mitzvah</i> ) feminine singular	החוקים ( <i>ha-huq-qīm</i> / <i>ha'chukim</i> ) masculine plural	והמשפטים ( <i>wə-ham-miṣ-pā-tīm</i> / <i>v'ha'mishpatim</i> ) masculine plural
Vulgate	<i>praecepta</i> neuter plural	[et] <i>caeremoniae</i> feminine plural	<i>et iudicia</i> neuter plural
KJV	the commandments plural	the statutes plural	and the judgments plural

The first of the three is changed from a singular noun, *mitzvah*, in Hebrew to the plural noun, *praecepta*, in Latin (and subsequently in the English of the KJV). Because the Hebrew Bible was not written with punctuation like commas, this mistranslation results in a phrase that is easily mistaken for a list of three: laws, statutes and judgments. As J. Budziszewski notes in his commentary on the *Summa*, with this list of three plurals, ‘taking [*mitzvah*] to refer to precepts per se would make the classification redundant, as though we were to speak of “civil engineers, electrical engineers, and engineers”’.<sup>10</sup>

However, because the first Hebrew term in the sequence is actually singular, most translations coming directly from the Hebrew interpret this passage very differently. It is not a list of three, but a heading followed by two sub-categories. The JPS Torah reads, ‘And this is the Instruction—the laws and the rules—that our God YHWH has commanded [me] to impart to you’.<sup>11</sup> Many other contemporary translations have also fixed the mistake. For example, the NABRE reads, ‘This then is the commandment, the statutes and the ordinances, which the LORD, your God, has commanded that you be taught’. Budziszewski’s analogy, amended for consistency with the Hebrew, would instead be: ‘This is the department of engineering—the civil engineers and electrical engineers’.

This interpretation is also more consistent with the surrounding context. At the end of the previous chapter, God commands Moses to remain with the Israelites, so that he can give him the ‘whole Instruction—the laws and the rules—that [He] shall impart to them’ (Deut. 5:31). This phrase uses exactly the same sequence of Hebrew words found in Deuteronomy 6: *ha'mitzvah*—*ha'chukim* *v'ha'mishpatim* (and the Vulgate mistranslates it in the same way, with three plurals). After this list comes an admonition to ‘be careful to do as God commanded you and follow only on his path’ (Deut. 5:33). Deuteronomy 6:1 follows immediately: ‘This is the commandment . . .’ Thus, it makes sense for ‘what God commanded you’ or ‘his path’ to be realised as a singular ‘commandment’ which is then divided into two categories, *chukim* and *mishpatim*.

Having established the flawed reading of Deuteronomy 6:1, we can turn to Deuteronomy 4:13–14, which represents the other half of Aquinas’ biblical evidence of a threefold division. The full passage reads:

<sup>10</sup>J. Budziszewski, *Commentary on Thomas Aquinas’s Treatise on Divine Law* (Cambridge: CUP, 2021), p. 69; n.b., Budziszewski was working with the Blackfriars translation, which retains the mistake.

<sup>11</sup>*Tanakh: A New Translation of the Holy Scriptures According to the Traditional Hebrew Text* (Philadelphia: Jewish Publication Society, 1985).

[The Lord] proclaimed to you his covenant, which he commanded you to keep: the ten words, which he wrote on two stone tablets. At that time the Lord charged me to teach you the statutes and ordinances for you to observe in the land you are about to cross into and possess. (Deut. 4:13–14)

Aquinas argues that this passage substantiates a kind of law beyond the Ten Commandments and therefore beyond the moral law. Again, the Hebrew is ‘*chukim* and *mishpatim*’. I would argue that this passage abides by the same convention as Deuteronomy 6:1, and that it could thus describe a greater, overarching command (the Decalogue) and two subcategories. The sticky implication would be that in this case, the Decalogue would seemingly have to encompass both the moral and (perhaps indirectly) the ceremonial and judicial precepts. But Aquinas would not take issue with ascribing non-moral commandments to the Decalogue indirectly, since they are determinations of worship and justice, both of which thematically permeate the Ten Commandments. At one point, Aquinas even asserts himself that all the ceremonial precepts belong to the third commandment (on keeping the Sabbath) by virtue of its fixing a specific time. In q. 100 a. 11, he writes simply, ‘To the third commandment are added all the ceremonial precepts’.<sup>12</sup>

Because the *chukim/mishpatim* convention of Deuteronomy 6:1 suggests a twofold system that can still be consistent with Deuteronomy 4:13–14, the biblical evidence that Aquinas provides undermines his categorisation of the ‘Old Law’. His threefold categories follow only from the Vulgate translations of the headings, not from the original Hebrew. In the next section, we will see that this tension between the threefold system and the text of the Bible is exacerbated on examining the actual precepts and attempting to sort them into Aquinas’ categories.

Precept-sorting problems

The Vulgate mistranslation produces a system that is not only inconsistent with the original Hebrew of the biblical text but also incompatible in practice with the precepts it is meant to sort. While some fit nicely (‘do not kill’ as a moral law, ‘salt all sacrifices’ as a ceremonial law and ‘appoint a king from Israel’ as a judicial law), others seem to fit into multiple categories, as seen in the following examples:<sup>13</sup>

Law	Moral? (i.e. adheres to one of the 10 Commandments OR is available to reason OR is concerned with virtue)	Ceremonial? (i.e. concerns determinations of worship)	Judicial? (i.e. concerns man- man interactions)
Sanctify God’s name (Lev. 22:32)	✓	✓	✗
Do not bow down to idols (Exod. 20:5)	✓	✓	✗

(Continued)

<sup>12</sup>ST 1/2.100.11.  
<sup>13</sup>This problem could be solved by suggesting an order for where laws fall by default, but Aquinas does not do this, and so we must treat the categories as coplanar.

(Continued)

Law	Moral? (i.e. adheres to one of the 10 Commandments OR is available to <i>reason</i> OR is concerned with <i>virtue</i> )	Ceremonial? (i.e. concerns determinations of <i>worship</i> )	Judicial? (i.e. concerns <i>man-man</i> <i>interactions</i> )
Do not withhold food, clothing or sex from your wife (Exod. 21:10)	✓	✗	✓
Honour thy father and mother (Exod. 20:12)	✓	✗	✓
The High Priest must marry a virgin (Lev. 21:13)	✗	✓	✓
The priests must bless the Jewish nation daily (Num. 6:33)	✗	✓	✓
Do not imitate the customs of idolators (Lev. 20:23)	✓	✓	✓
Do not attempt to engage the dead in conversation (Deut. 18:11)	✓	✓	✓

Still others seem not to fit into any of the three categories:

Law	Moral? (i.e. adheres to one of the 10 Commandments OR is available to <i>reason</i> OR is concerned with <i>virtue</i> )	Ceremonial? (i.e. concerns determinations of <i>worship</i> )	Judicial? (i.e. concerns <i>man-man inter-</i> <i>actions</i> )
Do not tattoo the skin (Lev. 19:28)	✗	✗	✗
Men must not shave their beards with a razor (Lev. 19:27)	✗	✗	✗
Do not eat blood (Lev. 3:17; Lev. 7:21)	✗	✗	✗
Do not plow with an ox and a donkey yoked together (Deut. 22:10)	✗	✗	✗
Do not eat diverse seeds planted in a vineyard (Deut. 22:9)	✗	✗	✗

Because none of these latter precepts need multiple parties present to be observed, they cannot be said to be judicial by Aquinas' definition. Each could be observed or broken even by the last man on earth. They are also not moral, since reason alone could not derive any of them specifically. Though this alone could disqualify them as moral precepts by Aquinas' definition, it also seems that none of these relate obviously to the decalogue, and none are obviously concerned with virtue. If one were to argue that these

laws are concerned with virtue, it would be because they relate to the first commandment, 'I am the Lord Your God'. To acknowledge that the Lord is God is virtuous according to Aquinas and so acknowledging this fact by doing whatever the Lord commands is also virtuous, but not to a special degree beyond any other edict that would justify setting it apart in its own category. By the same logic, one could also argue that each of these is a ceremonial precept (i.e. something concerned with worship by virtue of the fact that it is an edict from God). But the same objection arises: by this standard, every precept of the Hebrew Bible could be considered ceremonial since they are all commanded by God. Aquinas designates a particular category for ceremonial precepts, which suggests that he means for 'ceremonial' to have more conditions than simply 'is a law laid down by God'. Thus, since these commands are not determinations of worship in any specific sense, nor are they moral or judicial, they do not fit well into any of Aquinas' three categories. They, along with the laws above them that fall into multiple categories, show that Aquinas' threefold division of law is incompatible with the text containing the laws and does not serve for practical application.

Thus, Aquinas' threefold division is supported neither by the biblical passages he cites nor by the actual content of the laws themselves. Aquinas was a scholar deeply committed both to biblical consistency and to the practical help of Christians, so out of respect for those aims, the Thomist ought to reevaluate the threefold division of the law set forth in q. 99 in favour of one that better aligns with the relevant Old Testament passages and precepts.

### *Chukim and mishpatim as an alternative framework*

Having established that a threefold division of 'Old Law' is not reflected in the structure of the 'Old Law' given Bible or compatible with the concrete content of its precepts, I will spend the rest of this paper proposing an alternative and discussing its implications. I will aim for a system that is biblically supported and practically applicable, but which uses as much of Aquinas' original framework as possible and also satisfies his primary aim for the system, which is fruitful moral instruction for Christians on the relevance of precepts from the Hebrew Bible for their religious practice.

To instruct Christians, Aquinas' system needed to differentiate between eternally binding moral laws and other laws that are culturally contingent. Jean Porter writes:

At the most foundational level, the distinction between moral precepts and other kinds of precepts, such as ceremonial precepts, is an interpretative distinction that is not perspicuous in Scripture itself. Yet some such distinction was necessary if the scholastics were to acknowledge the Old Testament as inspired by God without committing themselves to the view that Christians are obliged to observe the whole of the Mosaic law as recorded there.<sup>14</sup>

Aquinas wanted to give Christians a reasonable, systematic justification for why they maintain some of the precepts in the Hebrew Bible and not others. Brian Davies also alludes to this motivation when he writes that the ceremonial and judicial precepts are meant to represent those governing the Jewish people and to be viewed in contrast to

<sup>14</sup>Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Toronto: Novalis, 1999), p. 137.



natural law and the New Law.<sup>15</sup> This motivation reflects the main end of the whole *Summa*: to instruct, as simply and systematically as possible, in topics relevant to Christians.<sup>16</sup> The threefold division has been widely used to this effect: post-scholastic theologians,<sup>17</sup> contemporary ethicists<sup>18</sup> and even modern popes<sup>19</sup> use it to justify claims about the relevance of certain Hebrew Bible precepts to Christians. These useful applications of Aquinas' system need not crumble without its exegetically problematic threefold aspect.

We ought to pursue Aquinas' end of differentiating between universally and contingently relevant precepts by amending it to a binary division that follows directly from the text and functions better as a sorting mechanism. This binary system has two categories: 1) moral law, which is rationally explicable, eternally binding and universally relevant; and 2) cultural law, which is not necessarily rationally explicable and is only conditionally binding. Cultural law encompasses Thomas' judicial and ceremonial categories, as well as those precepts which don't seem to fit cleanly in any of Aquinas' three categories.

The division between moral and cultural precepts maps roughly onto a preexisting Jewish understanding of the words *mishpatim* and *chukim*, which is perfectly fitting, since they are the two subcategories listed in the verses Aquinas cites in support of precept sorting. The two terms are used together as a convention in the Hebrew Bible to describe the law in two parts.<sup>20</sup> The most commonly held explanation for this convention in Rabbinic literature and Jewish philosophy is set forth by Moses Maimonides, the most well-known Jewish philosopher of the medieval period and a common point of reference for Aquinas.<sup>21</sup> Maimonides writes:

The *mishpatim* are those commandments whose reasons are obvious and the benefit of their performance is known. Some examples are prohibitions of theft and murder, and the obligation of honoring one's parents. The *chukim* are those commandments whose reasons are not known . . . Man's natural inclination causes him to question the *chukim* . . . such as the prohibitions of swine, the cooking and eating of milk cooked with meat, and the commandments of the battered calf, the red heifer, and the scapegoat.<sup>22</sup>

This interpretation derives principally from verses like Leviticus 18:4, where the Israelites are commanded to 'observe' (תעשׂו) the *mishpatim*, but to 'guard' (תשמרו) the *chukim*. Rabbinic interpretation suggests that this assignment of verbs shows a key

<sup>15</sup>Brian Davies, *Thomas Aquinas's Summa Theologiae: A Guide and Commentary* (Oxford: OUP, 2014), p. 220.

<sup>16</sup>ST, Prologue.

<sup>17</sup>See Francisco Suárez, *Selections from Three Works: A Treatise on Laws and God the Lawgiver; A Defence of the Catholic and Apostolic Faith; A Work on the Three Theological Virtues: Faith, Hope, and Charity*, ed. Thomas Pink (Indianapolis, IN: Liberty Fund, 2015).

<sup>18</sup>Jean Porter, *Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville, KY: Westminster John Knox, 1990). See also Brian Davies, *The Thought of Thomas Aquinas* (Oxford: Clarendon, 1993).

<sup>19</sup>See Pope St. John Paul II, *Veritatis Splendor* (Boston: St. Paul Books and Media, 1993), p. 101 n79.

<sup>20</sup>See Lev. 26:46; Deut. 4:1, 5:1, 6:1, 7:11, 11:32, 12:1; 2 Kings 17:37; 1 Chron.22:13; Neh. 1:7.

<sup>21</sup>ST 1/2.101.1, 3.

<sup>22</sup>Moses Maimonides, *Sefer 'Avodah: Hilchot Me'ilah, The Laws of the Misappropriation (of Consecrated Property)*, trans. JPS (New York: Moznayim, 767 [2007]).

difference between the two categories.<sup>23</sup> Whereas both kinds of laws must be observed, the *chukim* – those that would not have been codified save for the Torah – must also be guarded from those who would call them unnecessary. This differentiates them from moral laws, which need no guarding because they are accessible to anyone’s reason, even without the Torah. Aquinas’ picture of moral law maps roughly onto this understanding of *mishpatim*.<sup>24</sup> The other category, encompassing judicial, ceremonial and any misfit, non-moral precepts, is what I call cultural law, mapping roughly onto *chukim*.

As with Aquinas’ threefold division, in the binary moral/cultural division based on the distinction between *mishpatim* and *chukim*, any law which satisfies one of the three conditions for moral law (viz., corresponds to one of the Ten Commandments, is available to reason, or is concerned with virtue) belongs to the moral law category. All others fall into the second, cultural category. Because the categories are reflected by a biblical account of the very Hebrew words they are attached to, this binary system aligns better with the text of Deuteronomy 4 and 6, on which Aquinas relies for evidence of the existence and nature of a division among the precepts of the ‘Old Law’. It also allows for reasonable sorting where the threefold division did not:

This division is more faithful to its originating text, more useful for precept-sorting, and – perhaps most importantly for Aquinas – better serves to inform Christians as to each precept’s relevance for their living a moral life. Because the moral law category in

Law	Moral precept ( <i>mishpat</i> )?	Cultural precept ( <i>chok</i> )?
Sanctify God’s name (Lev. 22:32)	✓	✗
Do not bow down to idols (Ex. 20:5)	✓	✗
Do not withhold food, clothing or sex from your wife (Ex. 21:10)	✓	✗
Honor thy father and mother (Ex. 20:12)	✓	✗
Do not imitate the customs of idolators (Lev. 20:23)	✓	✗
Do not attempt to engage the dead in conversation (Deut. 18:11) <sup>25</sup>	✓	✗
The High Priest must marry a virgin (Lev. 21:13)	✗	✓
The Kohanim must bless the Jewish nation daily (Num. 6:33)	✗	✓
Do not tattoo the skin (Lev. 19:28)	✗	✓
Men must not shave their beards with a razor (Lev. 19:27)	✗	✓

(Continued)

<sup>23</sup>B. Yoma 67b.

<sup>24</sup>*Mishpatim* must be rationally accessible: see *Shemonah Perakim* ch. 6, and *The Guide for the Perplexed* 3:26. *Mishpatim* must pertain to virtue: see Shubert Spero, ‘Rabbi Joseph Dov Soloveitchik and the Role of the Ethical’, *Modern Judaism* 23/1 (2003), pp. 12–31.

<sup>25</sup>It is debatable whether this precept meets Aquinas’ standards for moral law. Though it seems to me to be reasonable and concerned with virtue, this may be because I have internalised an associated cultural/religious taboo.

(Continued)

Law	Moral precept ( <i>mishpat</i> )?	Cultural precept ( <i>chok</i> )?
Do not eat blood (Lev. 3:17)	✗	✓
Do not wear a cloth woven of wool and linen (Deut. 22:11)	✗	✓
Do not eat diverse seeds planted in a vineyard (Deut. 22:9)	✗	✓

my twofold system takes its three conditions from Aquinas, it does not exclude as 'cultural' any precept that he thought to be binding. The big question remaining is whether the 'cultural precepts' can be observed without sin by Christians since Aquinas subdivides between judicial and ceremonial precepts based on this determination.

### Implications for the binary division of the 'Old Law'

In Aquinas' threefold division, judicial law and ceremonial law carry different implications with respect to the question of whether Christians can legitimately observe them. Aquinas believes Christians can choose to observe judicial laws or not, but that to observe ceremonial laws is a mortal sin. This is a life-or-death feature of Aquinas' division, so I must determine whether cultural precepts ought to be subdivided as such into mortal-sin-inducing and non-mortal-sin-inducing categories. I will argue that, based on Aquinas' own understanding of the link between the sinful nature of ceremonial observance and the intent behind the action, no binary subdivision of cultural law is necessary. Instead, Christians may be obligated to consider the sinfulness of upholding cultural precepts on a spectrum of potential harm by scandal or self-confusion.

I begin by asking what part of observing ceremonial law contains the mortal sin for Aquinas. Aquinas answers plainly: the intent. In article 4 of question 103, he asks, 'Is it a mortal sin to observe the ceremonial precepts after the coming of Christ?' Before answering 'yes', Aquinas considers an objection based on the following text from Acts of the Apostles:

It is the decision of the Holy Spirit and of us not to place on you any burden beyond these necessities, namely, to abstain from meat sacrificed to idols, from blood, from meats of strangled animals, and from unlawful marriage. If you keep free of these, you will be doing what is right. (Acts 15:28–29)

In this verse, the apostles seem to say that keeping certain ceremonial precepts (like kosher butchery regulations) is good. Aquinas acknowledges that this would be a ceremonial observance and, in his reply, concedes that these abstinences can morally be observed by Christians, though they fall under the ceremonial law category. The key is that they are permitted if and only if the intent behind their practice is something other than compliance with the precept *pro se*. Aquinas argues that we must 'hold that these foods were forbidden . . . not with the purpose of enforcing compliance with the legal ceremonies, but in order to further the union of Gentiles and Jews living side by side'.<sup>26</sup>

<sup>26</sup>ST 1/2.103.2.

If Aquinas believes that these prohibitions can be instructed and practised without sin so long as they are attached to the right intent, surely other precepts can as well. Let us consider the intents in play for the apostles. The 'union of Gentiles and Jews' could carry an intent of Christian evangelisation or of simply accommodating others to be kind and live peaceably. There are certainly other ceremonial precepts one could practice towards either of those intents. If a Christian were, say, to bless God after meals (see Deut. 8:10) so that Jewish guests could eat more comfortably in their home, it could be either a measure of civil kindness or a tactic for evangelisation. Either way, Aquinas could be satisfied, so long as the Christian were not doing so to observe the precept for its own sake.

This logic allows for the easement of a current tension between Catholic practice and Aquinas' system of legal categories. There are several popular practices amongst Catholics, some even officially enshrined within the church, that seem to observe ceremonial precepts and would constitute mortal sin by Aquinas' standards unless intent is a mitigating factor.

One example is circumcision. Tens of millions of Catholics are circumcised. If the act of keeping a ceremonial precept is sinful *per se*, these circumcised people all have cause for mortal concern. Paul even says, 'if you have yourselves circumcised, Christ will be of no benefit to you' (Gal. 5:2). But Paul goes on to qualify this claim in a way consistent with the point I am making: 'You are separated from Christ, you who are trying to be justified by law' (Gal. 5:4). It is the end sought in the circumcision that determines its moral/salvific implications for Christians. If the circumcision is performed for medical or cultural reasons, the act escapes Aquinas' and Paul's condemnation. Another example is the use of incense in Catholic Churches. In the *Catechism of the Catholic Church*, incense is encouraged as a sign accompanying the Word of God, to nourish the faith of believers.<sup>27</sup> The use of incense is also an affirmative commandment in Exodus 30:7, and since it is a determination of worship, it would certainly constitute a ceremonial precept. But if the moral determinant of keeping the precept is the keeper's intent, the Catholic Church is not in Thomistic trouble as long as it is not using incense for the purpose of keeping the precept, even if its use is inspired by the precept and its context.

A proponent of Aquinas' original distinction might argue that even if the ceremonial/judicial distinction does not always indicate which precepts it constitutes a sin to keep, the division is still reasonable because it is prudent to divide those precepts whose observance *could* be mortal sin from those that cannot. But because of the cultural distance between contemporary Christians and the Jews with whom the Tanakh originated, many judicial laws now have the same effect that ceremonial laws do in terms of an association with pre-messianic, Jewish religiosity. These may be judicial, having to do with man-man interactions, but if they were practiced today by Christians, the result would be similar to practicing a ceremonial precept: people would see Christians observing them and assume they were Jewish. Consider, for example, a Christian who chooses to be married according to *kiddushin* and *nissuin*, the Jewish customs of marriage. Marriage laws are certainly judicial (having to do with the determinations of interpersonal relationships), but guests would likely assume that at least one in the couple was Jewish (i.e. not believing in 'Jesus the Messiah'). Thus, even without observing ceremonial precepts like animal sacrifice, Christians can be in danger of a false profession of faith.

Based on this logic, I would argue that the best method for determining a Christian ethic of the cultural precepts in the Hebrew Bible is a potential sinfulness spectrum. On

<sup>27</sup>*Catechism of the Catholic Church*, 2<sup>nd</sup> edn. (Huntingdon, PA: Our Sunday Visitor, 2000), §1154.

one end are laws with the greatest chance of scandal and the fewest reasonable intents for keeping the precepts beyond keeping them for their own sake. These would be, for example, those laws concerning animal sacrifice, which would be hard to justify keeping for a reason other than to please God by following them, and which would very likely cause onlookers to think the practitioners did not believe animal sacrifice to be moot since Christ's passion. On the other end are laws which can be kept without causing scandal and which have many or obvious reasons for keeping them besides keeping them for their own sake. The Acts 15 prohibitions might fall here, since, as Aquinas points out, they can be justified as private measures to foster unity between Jewish and Christian neighbours. Other precepts may fall in the middle, and Christians must discern whether they bear non-sinful intent and whether their observance will cause any scandal.

Though a spectral understanding of cultural precepts leaves room for ambiguity, it more accurately reflects the ideas underpinning Aquinas' understanding of the 'Old Law' and is a sharper tool for practical Christian ethics than a ceremonial/judicial subdivision.

There is another serious inconsistency between Aquinas' system and the Catholic Church, one that my twofold interpretation does not solve, and it has to do with the status of the Mosaic covenant for Jews *post Christum*. The Catholic Church officially holds that 'the Jewish people continue to live within the truth of the covenant God made with Abraham, and that God continues to be faithful to them'.<sup>28</sup> Though in recent years the United States Conference of Catholic Bishops softened the language on this matter in the *Catechism*, they maintain that the teaching remains the same: that 'God does not repent of the gifts he makes nor the calls he issues' and that 'the covenant that God made with the Jewish people through Moses remains eternally valid for them'.<sup>29</sup> Statements like these lead many scholars to believe that the Catholic Church's position on the status of Jewish religious observance is incompatible with Aquinas' stance that any observance of ceremonial precepts constitutes mortal sin, a verdict with the grave implication that Torah-observant Jews exist in a state of mortal sin.<sup>30</sup>

One such scholar, Bruce Marshall, reflected on this tension and concluded that according to the Catholic Church, 'it cannot be the case that the Jewish people, precisely by the practice of Judaism, fail to worship, and indeed reject, the God who chose them and their descendants forever'. He concludes, therefore, that it is 'hard to reconcile Thomas's thought that the Jewish religion has become a mode of infidelity with his own commitment to the permanence of Israel's election' – the very principle that undergirds the Church's reaffirmed position in favour of Jewish salvation by way of the Mosaic

<sup>28</sup>*Catechism of the Catholic Church*, §839.

<sup>29</sup>Catholic Catechism for Adults Revised to Clarify Catholics' Understanding of Jewish Covenant', *Catholic News Agency* (Washington, D.C.), August 28, 2009, <https://www.catholicnewsagency.com/news/16964/catholic-catechism-for-adults-revised-to-clarify-catholics-understanding-of-jewish-covenant>.

<sup>30</sup>There is a good deal to be said here on Aquinas' general attitude toward the Jewish role in salvation history and possible anti-Jewish colours in his determinations, though it goes beyond the scope of this paper. For more reading, see Jeremy Cohen, 'Supersessionism, the Epistle to the Romans, Thomas Aquinas, and the Jews of the Eschaton', *Journal of Ecumenical Studies* 52/4 (2017), pp. 527–53; and Edward A. Synan, 'Some Medieval Perceptions of the Controversy on Jewish Law', in Clemens Thoma and Michael Wyschogrod (eds), *Understanding Scripture: Explorations of Jewish and Christian Traditions of Interpretation* (New York: Paulist, 1987), pp. 102–24; Steven C. Boguslawski, OP, *Thomas Aquinas on the Jews: Insights into His Commentary on Romans 9–11* (Mahwah, NJ: Paulist Press, 2008); and Matthew Tapie, *Aquinas on Israel and the Church: the Question of Supersessionism in the Theology of Thomas Aquinas* (Cambridge: James Clarke & Co., 2015).

covenant.<sup>31</sup> Aquinas' verdict on ceremonial law certainly stands in tension at least with the Church's contemporary positions, and maybe even with his own principles.

In proposing a twofold version of Aquinas' system, I retained his condition for ceremonial observance being immoral: belief or represented the belief that Jesus did not come, did not save. Resolving the tension between Aquinas' system and the Catholic Church would require discarding this core standard.<sup>32</sup> This differentiation is a big part of what gives Aquinas' system its instructional bite, which is why I retained it when I went in search of a twofold version that would still satisfy his aims. I do believe that there is a good argument to be made for a version whose only practical differentiation is between a moral law which must be kept and a cultural law which can be kept. Though this would not align with all of Aquinas' original aims for the system, it would still retain at least its most fundamental differentiation (moral vs. non-moral precepts) and would bring it into line with the modern Church's vision on the salvific content of the Mosaic covenant for Jews. Another way out of the tension is to determine that Aquinas' system only applies to Christians and so makes no claim on the morality of Jews keeping ceremonial precepts. I find this second solution preferable given the real instructive benefit of Aquinas' coming-messiah differentiation for Christians and its adherence to the scope of the *Summa*, that is, to instruct *Christians*, not everyone.

### Potential objections

The final section of this paper will examine two potential objections to my proposal to amend Aquinas' trinary division to a binary moral/cultural one mapping roughly onto the Jewish philosophical interpretation of *mishpatim* and *chukim*. Though we have seen that a binary moral/cultural division is better suited to Aquinas' aims, we should still consider whether there are any biblical or practical reasons to retain the judicial/ceremonial subdivision of cultural law that outweigh the strengths of a twofold system. I will discuss two such reasons, one exegetical and one practical, but ultimately find that neither provides sufficient grounds to subdivide the binary system that I propose.

The first issue is biblical. I am proposing a change partially based on a need for textual accuracy, so it matters that the division in the text is typically twofold: *mishpatim* and *chukim*. However, there are other words sometimes used to label precepts, sometimes even in conjunction with *mishpatim* and *chukim*. The words that sometimes appear besides those are *edot*, *devarim*, *torot* and *mitzvot*. These terms are scattered throughout accounts of the law with no clear throughline as to the significance of their differences. They indicate limitations on the degree to which any dividing system, twofold or threefold, can fully encapsulate the nuances of categorising the precepts of the Hebrew Bible; but they still appear to be deviations from a clear convention. The pairing of *mishpatim* and *chukim* is pervasive and consistent throughout Tanakh, and so still provides the best starting point for a text-based categorisation of the 'Old Law'. The precedence of the *mishpatim/chukim* pairing is

<sup>31</sup>Bruce D. Marshall, 'Religion and Election: Aquinas on Natural Law, Judaism, and Salvation in Christ', *Nova et Vetera* 14/1 (2016), p. 125.

<sup>32</sup>If we do discard the 'Jesus vs. messiah yet to come' differentiation, both the twofold and threefold systems can see Jewish Torah observance as non-sinful if intent determines the moral status of keeping a precept. After all, as both Marshall and the *Catechism* point out, the advent of the Messiah is a core intent that Jewish and Christian religious practice have in common. See *ibid.*; and *Catechism of the Catholic Church* §840.

also evidenced by the fact that later Jewish scholars such as Maimonides used it as their basis for dividing the law.

The second potential objection I see to the twofold division is practical and has to do with moral precepts being concerned with virtue.<sup>33</sup> The objection, which I introduced in the third section of this paper, is this: are not all laws of the Bible concerned with virtue since doing God's will is virtuous? It seems obvious that doing what God tells you is virtuous in all cases if God's will is the ultimate good plan, which Aquinas certainly thinks is true.<sup>34</sup>

The answer to this objection comes in the definition of 'good' that Aquinas uses to define 'virtue'. In an earlier question in the *Summa Theologiae*, Aquinas defines virtue as 'a good habit bearing on activity'.<sup>35</sup> While on its face, this definition might seem to apply to the cultural precepts – they instil habits, they bear on activity and they derive from God who is the ultimate good – Aquinas' definition of 'good' in this case adds the necessary differentiating context. In one of the replies to the objections for that same question, he specifies that the 'good' he uses in his definition is the 'good that is fixed by reason' as opposed to 'good in general'.<sup>36</sup> Because 'good' in the sense that a virtue might be defined by God's 'goodness' instead is defined relative to human reason, the condition that a moral law must be concerned with virtue still cleanly excludes all of the cultural precepts and includes all those Aquinas would have deemed moral precepts. In fact, the effect of this definition of 'good' matches that of the condition that a moral precept must be accessible to reason. If the precept makes sense to the morally wise person, that is, if it seems 'good' according to reason, it satisfies both conditions, since that means it is also 'virtuous' under Aquinas' definition here.

Neither of the objections I have outlined offer sufficient reason to discard the moral/cultural division of 'Old Law' in favour of a threefold one. Because a twofold moral/cultural division is better supported by the relevant biblical text and still accomplishes Aquinas' ends, it stands as a viable reimagining of his threefold division.

## Conclusion

In this paper, I have argued that we ought to reevaluate Aquinas' threefold division of what he terms 'Old Law'. I found that the original Hebrew text for the verse Aquinas uses to justify dividing the law supports a twofold system rather than a threefold one, and that Aquinas was working with a faulty translation of the verse that threw him off course. I proposed a twofold, moral/cultural framework that aligns with the rabbinic understanding of the words *mishpatim* and *chukim*, which are the terms in the verse Aquinas references as evidence for his division. This binary division functions better when it comes to categorising the precepts and thus better accomplishes Aquinas' original end of providing a system to distinguish between eternally binding and culturally contingent laws in the Hebrew Bible. Out of respect for Aquinas' aim (developing a system that informs Christian ethics) and method (deriving a system of

<sup>33</sup>This objection also lands for a threefold system, as I cover at the end of the precept-sorting section.

<sup>34</sup>God is the efficient cause of infused virtue'. *ST* 1/2.55.4.

<sup>35</sup>*Ibid.*

<sup>36</sup>*Ibid.*, reply to objection 2.

‘Old Law’ from the text of the Hebrew Bible), the Thomist ought to move to a binary division of ‘Old Law’, which I contend that Aquinas might have put forth himself had he been working with a more faithful translation.<sup>37</sup>

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