



Notre Dame Law Review

Volume 25 | Issue 2

Article 3

2-1-1950

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Recommended Citation

Anton-Hermann Chroust, *St. Augustine's Philosophical Theory of Law*, 25 Notre Dame L. Rev. 285 (1950).

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ST. AUGUSTINE'S PHILOSOPHICAL THEORY OF LAW*

St. Augustine¹ truly stands on the threshold of ancient and medieval thought. His profound wisdom and learning as well as his many discriminating insights might indeed be called that one great funnel through which the philosophical erudition of antiquity could safely flow into the orbit of

*This paper is the depressing result of repeated but unsuccessful attempts to review *Legal Philosophy from Plato to Hegel* by Huntington Cairns (Baltimore: The Johns Hopkins Press, 1949. Pp. xv, 357). It is at the same time a candid admission that it is virtually impossible to discuss adequately, within the framework of the conventional "book review," a lengthy and detailed study of the various and involved legal theories of some of the most eminent philosophers of the western world. What Cairns undertakes is in fact nothing less than a painstaking inquiry into the history of western philosophy, written from the point of view of the juriconsult. That Cairns' latest book is a splendid piece of work will come as no surprise to those conversant with his earlier writings, such as *Law and the Social Sciences* and *The Theory of Legal Science*. It should be read carefully by all teachers and students of both philosophy and jurisprudence.

There is, however, one serious shortcoming in Cairns' book, a defect of omission rather than commission: his failure to dedicate a whole chapter to the philosophy of law of St. Augustine. Cairns' seven short and casual remarks on the work of the greatest of all the Church Fathers are somewhat disappointing. The decisive influence of St. Augustine on the further development of legal philosophy is a matter of historical knowledge, as is the fact that his many authoritative statements on law and jurisprudence, although widely dispersed throughout his many writings, became lasting directives for the whole of medieval legal speculation.

Hence it might be permissible to supply "the missing chapter" of Cairns' otherwise excellent study, rather than indulge in the petty "fault-finding procedure" commonly referred to as a "review." While the present writer cannot match Cairns' inimitable scholarship and firm grasp of the total history of legal philosophy, it is nevertheless his hope that he may, in a less impressive fashion, furnish some additional positive information of greater usefulness than mere negative criticism. It is sincerely hoped that Cairns will not regard this attempt as an expression of presumptuous vanity, but rather as a manifestation of the spirit of collaboration which is so essential to truly productive scholarship.

¹ Cf. Chroust, *The Philosophy of Law of St. Augustine*, 53 *PHILOS. REV.* 195 (1944); Chroust, *The Philosophy of Law from St. Augustine to St. Thomas Aquinas*, 20 *NEW SCHOLASTICISM* 26 (1946); FORTIN, *LE DROIT DE PROPRIETE DANS ST. AUGUSTIN* (1906); SCHILLING, *DIE STAATS- UND SOZIALLEHRE DES HL. AUGUSTINUS* (1910); SCHILLING, *NATURRECHT UND STAAT NACH DER LEHRE DER ALTEN KIRCHE* (1914); SCHILLING, *Die Rechtsphilosophie bei den alten Kirchenvatern* in 16 *ARCHIV FUER RECHTS- UND WIRTSCHAFTSPHILOSOPHIE* 1 (1922); HUEBNER, *UNTERSUCHUNGEN UEBER DAS NATURRECHT IN DER ALTKIRCHLICHEN LITERATUR*, u.s.w. (1918); TROELTSCH, *Die Soziallehren der christlichen Kirchen* in 1 *GESAMMELTE SCHRIFTEN* (1912); ZIEGLER, *Geschichte der christlichen Ethik*

Christianity.² Perhaps his most important contribution to the history of Christian metaphysics and, hence, that of legal philosophy, is his interpretation of the ultimate meaning of the Platonic Ideas (OUSIAI). In Plato, as we all know, the Ideas are autonomous substances, domiciled in a COSMOS NOETIKOS — an intelligible but inadequately defined and actually undefinable “realm” of pure and perfect existences. With St. Augustine, on the other hand, these Ideas, so to speak, become transferred into the Divine Intellect without, however, being identified with the Divine Intellect itself.³ The classical passage, where St. Augustine

in GESCHICHTE DER ETHIK, 2. Abt. (2d ed. 1892); HALL, HISTORY OF ETHICS WITHIN ORGANIZED CHRISTIANITY (1910); 2 and 3 DITTRICH, GESCHICHTE DER ETHIK (1926); SCHUBERT, *Augustins Lex-Aeterna-Lehre* in 24 BEITRÄGE ZUR GESCHICHTE DER PHILOSOPHIE DES MITTELALTERS, No. 2 (1924); STOCKUMS, *Die Unabänderlichkeit des naturlichen Sittengesetzes in der scholastischen Ethik* in FREIBURGER THEOLOGISCHE STUDIEN, Heft 4 (1911); BARBOUR, A PHILOSOPHICAL STUDY OF CHRISTIAN ETHICS (1911); OFFERGELT, DIE STAATSEHRE DES HL. AUGUSTINUS NACH SEINEN SAEMTLICHEN WERKEN (1914); SCHOLZ, GLAUBE UND UNGLAUBE IN DER WELTGESCHICHTE, EIN KOMMENTAR ZU AUGUSTINS DE CIVITATE DEI (1911).

² It should be remembered that the philosophical wisdom of St. Augustine was not a wisdom of pure speculation or theoretical contemplation of truth. His was a wisdom primarily born of charity, a wisdom of the sort King Solomon extolled and which made St. Paul so wise. See *Wisdom*, chaps. 6-9. It was a wisdom coming down from the “Father of Lights,” *Epistle of St. James* 1.17, one of those “best and perfect gifts,” *ibid.*, that enlighten the heart and inflame the will with the knowledge of the grandeur and glory, the charm and beauty, of all things ordered within the Divine Love. Cf. PHELAN, SOME ILLUSTRATIONS OF ST. THOMAS’ DEVELOPMENT OF THE WISDOM OF ST. AUGUSTINE 6 (1946). The order of thought which becomes manifest in St. Augustine is the order of infused wisdom, the highest of the gifts of the Holy Ghost.

³ The notion that the Ideas are “thoughts in the mind of the Godhead,” can already be found in Albinus (c. 150 A.D.), who in his *Didascalicus*, 6 HERMANN, PLATONS WERKE 163, lines 13 and 27 ff. (1851), points out that these Ideas are “thoughts of the deity.” Similar views were held by Philo of Alexandria (c. 30 B.C.-45 A.D.) in his *De opificio mundi* 4; lines 17 ff., 1.4 (Mangey ed. 1742), 1.5 ff. (Cohn-Wendland ed. 1896); Nicomachus of Gerasa, the Neo-Pythagorean who lived around 140 A.D., in the foreword to his *Introduction to Arithmetic* (ARITHMETIKE ISAGOGE) (Roche ed. 1866); Atticus (c. 175 A.D.), as quoted in Eusebius, *Preparatio Evangelica* 15.13.1-5; and by the so-called Neo-Platonists. Cf. PLOTINUS, ENNEADS 5.5. The present author believes that whenever St. Augustine refers to “the Platonists” he does not have in mind Plato and the members of the Early Academy, but rather the Neo-Platonists (Plotinus, Ammonius, Jamblichus, Porphyry, etc.) and the members of the school of “Middle Platonism” (Albinus, Gaius, Atticus, etc.).

expresses this view, is to be found in *De diversis quaestionibus LXXXIII*, quaestio 46, *de ideis* 2:⁴

For the Ideas constitute certain basic forms or principles of things, and as such are both enduring and immutable. They themselves are not formed, and for this very reason they are eternal and always the same. And these Ideas are contained in the Divine Intellect. Since they are neither generated nor subject to corruption, we hold that all that which potentially might be generated and corrupted as well as all that which is actually generated and corrupted, is formed after them.

Perhaps even more important is St. Augustine's statement in *Retractationes* 1.3.2, where he says:⁵

Plato did not err when he stated that there exists an intelligible world, although as regards this matter he did not employ a term commonly used in the tradition of the Church . . . He called this intelligible world the eternal and immutable reason itself, through which God created the universe.

This novel interpretation of the nature and "location" of the Platonic Ideas, that is to say, of the constant and immutable principles or forms of all things created, also determines decisively his attitude toward the basic problem of law and legal philosophy. Heraclitus of Ephesus,⁶ Pythagoras,⁷ Plato,⁸ and Aristotle⁹ had always maintained the ab-

⁴ 40 MIGNE, PATROLOGIA LATINA [hereinafter P.L.], col. 30: "Sunt namque ideae principales formae quaedam, vel rationes rerum stabiles atque incommutabiles, quae ipsae formatae non sunt, ac per hoc aeternae ac semper eodem modo sese habentes, quae in divina intelligentia continentur. Et cum ipsae neque oriuntur, neque intereant; secundum eas tamen formari dicitur omne quod oriri et interire potest, et omne quod oritur et interit."

⁵ 32 P.L., col. 588: "Nec Plato quidem in hoc erravit, quia esse mundum intelligibilem dixit, si non vocabulum quod ecclesiasticae consuetudini in re illa non usitatum est, sed ipsam rem velimus attendere. Mundum quippe ille intelligibilem nuncupavit ipsam rationem sempiternam atque incommutabilem, qua fecit Deus mundum." St. Augustine actually refers here to the LOGOS (*ratio*) and the COSMOS NOETICOS (*mundus intelligibilis*) of the Neo-Platonists. Cf. *De civitate Dei* 10.3.1; 41 P.L., col. 280.

⁶ DIELS, *DIE FRAGMENTE DER VORSOKRATIKER*, Frags. 112, 114, 431, 108 (4th ed. 1922).

⁷ ARISTOTLE, *METAPHYSICS* 1.6, 987 b 11.

⁸ PHILEBUS 22 C; REPUBLIC 508 E ff.; CRATYLUS 439 C; LAWS 716 C; LYSIS 219 C-220 B; GORGIAS 483 E; PHAEDRUS 247 D; PHAEDO 65 D, 66 A; PARMENIDES 130 B; REPUBLIC 517 C, 511 B, 501 B.

⁹ DE ANIMA 3.5, 430 a 23 ff.; METAPHYSICS 12.7, 1072 b 25 ff.; 6.1, 1026 a 19; 13.10, 1086 b 13 ff.; 11.3, 1060 b 31 ff.; 14.4, 1091 a 32 ff.; NICOMACHEAN ETHICS 1.4, 1096 a 19 ff.; 5.10, 1194 b-1195 a. Cf. JAEGER, *ARISTOTELES* 230 note, 136 (1924).

solute transcendency of the LOGOS, NOUS, or Divine (cosmic) Intellect. The Stoics, on the other hand, in their essentially naturalistic or materialistic conviction, had insisted that this "Intellect" or LOGOS is immanent to the world. In other words, according to Stoic teachings, this LOGOS is dispersed throughout the universe and as such signifies an essentially impersonal, vitalistic and naturalistic principle.¹⁰ The individual, as well as every individual thing, is thus a "part" of this universal cosmic reason — a mode by which the LOGOS becomes manifest.¹¹ Needless to say, aside from its materialistic or naturalistic aspects, this view proclaims a definitely pantheistic philosophy. In compliance with this fundamental view, the Stoics proclaimed that the complete submission to the cosmic reason constitutes the first moral principle, which finds expression in the often reiterated postulate: "to live according to nature."¹² According to the Stoics, the cosmic reason or LOGOS is not only the *lex aeterna* and nature, but also God Himself. In this fashion the Stoics actually identified the impersonal cosmic reason with the *lex aeterna*, the *lex aeterna* with nature, and nature with God.¹³

¹⁰ Cf. BONHOEFFER, *DIE ETHIK DES STOIKERS EPIKTET*, App. V (1894).

¹¹ Cf. 1 ARNIM, *STOICORUM VETERUM FRAGMENTA*, nos. 1046, 1022 (1903).

¹² 1 *Id.*, no. 527. The Stoic precept, "to live according to nature," also means to live according to one's own (human) nature. For one's own nature is merely a "part" of universal nature, and one's own reason only a manifestation of the universal cosmic reason which, as an impersonal cosmic principle, is one and the same with the individual and the universe. Hence Stoicism is actually a form of pantheism in that the cosmic reason is identified with God, God with nature, and nature with the individual.

¹³ To the Stoics, the foundation of all which might be called law is the moral spirit, which is part and parcel of the universal and, hence, rational cosmic order. By virtue of their belief in the consubstantiality of man's nature with the universal (divine) nature, the Stoics identified moral and physical principles, that is to say, the moral and the physical order. This also explains why morality is, with the Stoics, nothing else than complete harmony with nature. "Nature," however, had for the Stoics a twofold significance. Cf. DIOGENES LAERTIUS 7.87. It means, on the one hand, the HEGEMONIKON, the eternal, immutable, and sublimely rational necessity in the administration of everything that exists or moves. But since the Stoics designated this HEGEMONIKON also as the supreme deity, "living according to nature" to them signifies, on the other hand, morality, and morality submission to the decrees or commands of the Godhead. In other words, morality means submission to nature

In objecting to this type of pantheistic materialism, St. Augustine made his second most important contribution to Christian metaphysics and legal philosophy. And this contribution, which consists in a radical reformulation of the actual meaning of the Stoic cosmic reason or LOGOS, is fully in accord with his basic re-interpretation of the Platonic Ideas and, as a matter of fact, merely the cogent result of this re-interpretation. Already the early Greek philosophers and poets had spoken of an unwritten highest law of divine origin and divine nature. This law was regarded as being co-extensive with the "eternal order of things" decreed by the Godhead. Thus Heraclitus of Ephesus, for instance, had insisted that "all human laws derive their substance from that one law which is of God."¹⁴ The Pythagoreans considered the universal harmony, based on mathematical proportions, to be the true order of things and, hence, the eternal or divine law.¹⁵ Plato and Aristotle, the latter in a more indirect manner,¹⁶ were convinced of the existence as well as the

as well as to the divine law which also contains the divinely ordained purpose of the universe as decreed by Divine Providence.

In this manner the Stoic *lex naturalis* actually became the *lex aeterna*, an equivocation which had tremendous consequences for the subsequent development of the history of Natural Law theories. Cf. Chroust, *The Function of Law and Justice in the Ancient World and the Middle Ages*, 7 JOURNAL OF THE HISTORY OF IDEAS 305 (1946).

¹⁴ DIELS, *op. cit. supra* note 6, Frag. 114, (chap. 12 A 1).

¹⁵ *Id.*, Frag. 10. Cf. ARISTOTLE, METAPHYSICS 1.5, 958 b 23 ff.; 13.3, 1090 a 3 ff.; 13.3, 1090 a 20 ff.

¹⁶ When discussing the Natural Law of Aristotle, most scholars limit their investigations to the fifth book of the *Nicomachean Ethics*, where Aristotle apparently speaks of a "Natural Law" and a "positive law." Thus it has frequently been assumed that Aristotle considers the "law of the polis" (DIKAION POLITIKON) the "Natural Law," because this "political law" is subdivided into a "natural" (PHYSIKON) and a "positive" (NOMIMON) law. But what Aristotle had actually in mind here is the fact that the "law of the polis" has an *apriori* (PHYSIKON) and an *aposteriori* (NOMIMON) element. Hence, when discussing Aristotle's idea of a "higher law," we cannot limit ourselves merely to an analysis of the *Nicomachean Ethics*. For what Aristotle considers here is essentially nothing else than the *practical application* of this "higher law." His notion of the "higher law" is dispersed throughout his philosophical writings, and is presupposed, but not actually mentioned in the *Nicomachean Ethics*. Cf. JAEGER, *op. cit. supra* note 9, at 274, 86, 230, 228 ff., 250 ff., 254 ff. Of particular interest here are the *Metaphysics* 1091 a 30 ff., the *Protrepticus*, and *On Philosophy*, as well as those parts of Aristotle's writings which are referred to by Jaeger as "Urmetaphysik," "Urethik," and "Urpolitik."

necessity of such an eternal law. The Stoics in particular always referred to the "eternal cosmic law," which with them was identical with eternal reason.¹⁷ But with the Stoics, as has already been pointed out, this cosmic reason or *lex aeterna* signified a totally impersonal "force," a kind of vitalistic energy which not only permeates the universe, but actually constitutes this universe both in its whollist as well as its particular aspects.

St. Augustine fully realized both the advantages and disadvantages of the Stoic notion of the *lex aeterna*. The idea of a sublimely rational orderliness pervading the universe could not fail to appeal to him, but he was at the same time conscious of the dangers inherent in any attempt to identify this *lex aeterna* or this order with God Himself. Hence he proceeded to give the Stoic cosmic reason or *lex aeterna* a personalistic and theistic foundation by declaring it an act of God. Thus he stated quite emphatically that "the Divine Wisdom is the universal law."¹⁸

To understand and appreciate the profounder meaning of St. Augustine's "universal law," we must above all realize that to him "law" and "order" are two correlated and frequently synonymous terms. By "order" he means primarily that basic norm or standard according to which all created things act.¹⁹ But "order" signifies also the internal harmony and "peace" which exist among all creatures, from the high-

¹⁷ Cf., among others, MARCUS AURELIUS, 2.3, 4.40, 5.32, 12.30, 9.28, 2.13, 2.16, 2.17, 3.16, 5.27, 9.1, etc.; 1 ARNIM, *op. cit. supra* note 11, nos. 179-82, 552-56; 3 *id.*, no. 12, 2-28; no. 16, 57-59; CLEMENT OF ALEXANDRIA, STROMATA, 2.22.133, 2.186.19 ff.; CICERO, ACAD. PRIOR. 2.186.131; SENECA, EPISTOLA 20.5; DE BEATA VITA 8.2.

¹⁸ *De diversis quaestionibus LXXXIII*, quaestio 79.1, 40 P.L., col. 90: "Est enim lex universitatis Divina sapientia."

¹⁹ *De ordine* 1.10.28, 32 P.L., col. 991: "Ordo est . . . per quem aguntur omnia quae Deus constituit." Cf. CICERO, DE NATURA DEORUM 2.38.97, 2.40.101; DE DIVINATIONE 1.57.127; ACAD. POST. 1.7.29; DE OFFICIIS 1.4.14, 1.40.142-44. There can be no doubt that St. Augustine was well acquainted with the works of Cicero, particularly his philosophical works. Thus he himself admits in *Confessions* 3.4.7, that Cicero's *Hortensius* aroused in him a deep interest in philosophy. See also 46 P.L., col. 165 (sub titulo "Cicero"), where the quotations from Cicero in the works of St. Augustine are listed.

est to the lowest. All creatures aspire to this peace which essentially is nothing else than "the tranquility of orderliness."²⁰ Orderliness, on the other hand, signifies the harmonious interaction of every part in its relation to the whole, in which each created thing assumes its proper, that is, divinely ordained place.²¹ Obviously, St. Augustine refers here to "the inner natural order" to which all things are subjected.²² But the term "order" is also used in a moral sense. Thus St. Augustine says: "This is not the proper order, nay, cannot be called order at all, when that which is superior should be subordinate to that which is inferior."²³ Again in another place he makes it quite clear that "the rational soul acts morally only when it observes the universal order — when in all its distinctions, choices and evaluations it subordinates the lesser to the greater; the corporeal to the spiritual; the inferior to the superior; and the temporal to the eternal."²⁴ Thus it is the observance of this universal order which constitutes the road to God.²⁵ An "orderly conduct," according to St. Augustine, is a conduct, therefore, which conforms to this fundamental norm, which includes the basic moral norms and precepts.

We have already noted that St. Augustine, following in the footsteps of the best of classical tradition, frequently re-

²⁰ *De civitate Dei* 19.13.1, 41 P.L., col. 640: "Pax omnium rerum est tranquillitas ordinis. Ordo est parium dispariumque rerum sua cuique loca tribuens dispositio." Cf. CICERO, *DE OFFICIIS* 1.40.144: "Nam et ordinem definiunt Stoici compositionum rerum aptis et accommodatis locis. . . ."

²¹ Cf. note 20 *supra*.

²² It should be noted here that St. Augustine frequently relates the concept of order to that of beauty. Cf. *De vera religione* 30.56, 34 P.L., col. 146-47; *De vera religione* 43.80, 34 P.L., col. 159: ". . . ordinata convenientia pulchra iudicetur." *De vera religione* 40.76, 34 P.L., col. 156: "Ita ordinantur omnia officii et finibus suis in pulchritudinem universitatis, ut quod horremus in parte, si cum consideremus, plurimum placeat." *De civitate Dei* 19.13.1, 41 P.L., col. 640.

²³ *De libero arbitrio* 1.8.18, 32 P.L., col. 1231: "Non enim ordo rectus, aut ordo appellandus est omnino, ubi deterioribus meliora subiiciuntur."

²⁴ *Epistola* 140, 2.4, 33 P.L., col. 539: "Ita bene agit in his anima rationalis, si ordinem servet et distinguendo, eligendo, pendendo subdat minora maioribus, corporalia spiritualibus, inferiora superioribus, temporalia sempiternis."

²⁵ *De ordine* 1.9.27, 32 P.L., col. 990: "Ordo est quem si tenuerimus in vita, perducet ad Deum."

gards "order" and "law" as two synonymous terms. He deduces the meaning of the term *lex* (law) from *legere* (to read) or *elegere* (to select).²⁶ But *lex* signifies also "the selection of the just." Although St. Augustine clearly distinguishes between the temporal or human law and the eternal law,²⁷ whenever he refers to law (*lex*) in general, he has usually in mind the *lex aeterna*. Thus he queries his friend Evodius:²⁸

What law is it, which is called the supreme reason; which must always be obeyed; through which evil men merit the miserable and just men the beatific life; and by virtue of which that law which we have defined as the temporal law, can be issued as well as modified properly?

And Evodius replies: "Obviously, this is the *lex aeterna*."

St. Augustine then goes on defining the *lex aeterna*: "The *lex aeterna* . . . is that law which justifies, or is at the bottom of, the most perfect orderliness."²⁹ In other words, the *lex aeterna* is the inner justification for the inner order of all things. This eternal justification or order itself is nothing

²⁶ *Quaestiones in Heptateuchum* 3.20, 34 P.L., col. 681: "Unde etiam legem a legendo, id est eligendo latini auctores appellatum esse dixerunt." This passage obviously refers to CICERO, DE LEGIBUS 2.5: "Ut perspicuum esse possit in ipso nomine legis interpretando inesse vim et sententiam iusti legendi." St. Thomas Aquinas, on the other hand, states, SUMMA THEOLOGICA I.II, quaest. 90, art. 1, that "*lex* is derived from *ligare* (to bind), because it binds one to act." But he also says, *id.*, art. 4, ad 3, that "*lex* is derived from *legere* (to read)." Cf. ISIDORE OF SEVILLE, ETYMOLOGIAE 3.2.3; *Cod. Borgh.* 139 (saec. XIII) of the Vatican Library, folio 97 et seq. This work contains an anonymous treatise on the nature of the *lex aeterna* and the *lex naturalis*. Cf. Chroust, *The Philosophy of Law from St. Augustine to St. Thomas Aquinas*, 20 NEW SCHOLASTICISM 50 (1946). In this treatise the anonymous author, who is definitely influenced by St. Augustine, states that the term *lex* is not derived from either *legere* or *ligare*, but is rather a combination of both these words: "quia ligat per electionem."

²⁷ *De libero arbitrio* 1.6.14-15, 32 P.L., col. 1228-9; *id.* at 1.15.31-32, 32 P.L., col. 1237-8. Cf. CICERO, DE LEGIBUS 2.5.11: "Quae leges autem ad tempus descriptae sunt populis . . . divina mens summa lex est."

²⁸ *De libero arbitrio* 1.6.14, 32 P.L., col. 1229: "Quid? illa lex quae summa ratio nominatur, cui semper obtemperandum est, per quam mali miseram, boni beatam vitam merentur, per quam denique illam quam temporalem vocandam diximus, recte fertur, recteque mutatur . . . ? Evodius inquit: video hanc aeternam [*scil.*, legem] esse."

²⁹ *De libero arbitrio* 1.6.15, 32 P.L., col. 1229: "Ut igitur breviter aeternae legis notionem, quae impressa nobis est, quantum valeo verbis explicem, ea est qua iustum est ut omnia sint ordinatissima." Cf. CICERO, ACAD. PRIOR. 1.7.29; DE OFFICIIS 1.4.14; DE NATURA DEORUM 2.38.97.

else than the Divine Wisdom³⁰ or the Divine Intellect,³¹ and thus St. Augustine calls the *lex aeterna* "the Divine Intellect and the Will of God which commands us to observe the natural order, and forbids us to disturb it."³² In this sense, and in this only, the *lex aeterna* is the most sublime reason itself.³³ Thus not only the absolute necessity as well as the reason of all that exists or moves, but also the absolute justification for the orderliness and harmony in which everything exists and moves, rests in the will and wisdom (intellect) of a personal God. It is the Divine Wisdom (Intellect) and the Divine Will which not only created, but also maintains both the natural and moral order.³⁴ This order, which in its sublime rationality is both eternal and immutable, has the nature of a law — of a law, that is to say, which likewise must be eternal and, being the manifestation of the *ratio divina*, declaratory of unchangeable truths.³⁵ This is the *lex aeterna* "which is called the supreme reason

³⁰ *De diversis quaestionibus LXXXIII*, quaestio 79.1, 40 P.L., col. 90: "Est enim lex universitatis divina sapientia."

³¹ *Ibid.* Cf. *Enarratio in Psalmum 36*, sermo 3, 36 P.L., col. 383-95.

³² *Contra Faustum Manichaeum* 22.27, 42 P.L., col. 418: "Lex vero aeterna est ratio divina vel voluntas Dei, ordinem naturalem conservari iubens, perturbari vetans." *Id.* at 22.30, 42 P.L., col. 420; *id.* at 22.61, 42 P.L., col. 438; *id.* at 22.73, 42 P.L., col. 446. Cf. CICERO, *PHILIPPICA* 10.12.18: "Est enim lex nihil aliud . . . imperans honesta, et prohibens contraria." *DE LEGIBUS* 2.4.8: ". . . legem neque hominis ingenii excogitatum, nec scitum aliquod esse populorum, sed aeternum quiddam, quod universum mundum regeret imperandi prohibendique sapientiae." *Id.* at 2.4.10: ". . . lex vera atque princeps apta ad iubendum et ad vetandum ratio est recta summi Jovis." *Id.* at 1.6.18: "Lex est ratio summa, insita in natura, quae iubet ea quae facienda sunt, prohibetque contraria." *DE REPUBLICA* 3.22.

³³ *De libero arbitrio* 1.6.15, 32 P.L., col. 1229: "Quid? illa lex quae summa ratio nominatur . . . ?" Cf. CICERO, *DE LEGIBUS* 1.6.18; 2.4.18; 2.5: "Divina mens summa lex est."

³⁴ It should be noted here that, unlike the Stoics, St. Augustine does not hold that God Himself is this order, but merely the absolute justification for the existence of this order. Hence it is God's will or God's intellect which is the basis of the natural and moral order. Since this is so, both the natural and moral orders are in their sublimity eternal, immutable, and rational. Thus, barring one isolated instance, *De vera religione* 31.57, 34 P.L., col. 147: "Deus summa ista lex est . . ." St. Augustine, unlike the Stoics, never identifies God with the *lex aeterna*. For the Stoics, see 1 ARNIM, *op. cit. supra* note 11, no. 527.

³⁵ *De vera religione* 31.57, 34 P.L., col. 147.

or principle . . . and through which all that we may call temporal law, is done and modified in the proper manner."³⁶

By defining the *lex aeterna* as "the Divine Intellect and the Will of God," St. Augustine touches upon the dual "aspect" of the *lex aeterna*. He calls it, on the one hand, the supreme reason (Divine Intellect) and the wisdom of God. It is safe to assume that he refers here to the fact that the *lex aeterna* is "in" the Divine Intellect as the foremost exemplar of order, harmony, and normativity. It is, in other words, God's understanding of how creation must be ordered, and of how it is to be led to its proper end through this order. On the other hand, he designates it as the Will of God, thus implying that the *lex aeterna* is declaratory of the divine intent or resolve to bind forever all of His creation to this constant order devised by the Divine Intellect. Hence it might be said that the *lex aeterna*, according to St. Augustine, constitutes both the "ideal" and the realized plan or resolve of God as regards His creation.

St. Augustine's theistic definition of the *lex aeterna* became the basic concept as well as the authoritative pronouncement for the whole of medieval jurisprudence.³⁷ It was fully adopted, though further elaborated, by St. Thomas Aquinas,³⁸ whose treatise on law must be considered the first

³⁶ *De libero arbitrio* 1.6.14, 32 P.L., col. 1229. Cf. note 28 *supra*.

³⁷ Cf. Chroust, *The Philosophy of Law from St. Augustine to St. Thomas Aquinas*, 20 NEW SCHOLASTICISM 26 (1946).

³⁸ St. Thomas Aquinas quotes St. Augustine's definition of the *lex aeterna*, SUMMA THEOLOGICA I.II, quaest. 91, art. 1: "On the contrary, Augustine says: that law which is the supreme reason cannot be understood otherwise than unchangeable and eternal." This quotation refers to *De libero arbitrio* 1.6.15, 32 P.L., col. 1229; SUMMA THEOLOGICA I.II, quaest. 91, art. 2, obj. 1: "The eternal law is that law by which it is right that all things should be most orderly." This quotation refers to *De libero arbitrio*, *loc. cit. supra*. The same quotation appears in SUMMA THEOLOGICA I.II, quaest. 91, art. 3, obj. 1; quaest. 93, art. 4; quaest. 93, art. 1; quaest. 93, art. 2, which also refers to *De vera religione* 31.57, 34 P.L., col. 147; and in SUMMA THEOLOGICA I.II, quaest. 93, art. 3, obj. 3. (In his reply St. Thomas also refers to *De libero arbitrio* 1.6.15, 32 P.L., col. 1228). SUMMA THEOLOGICA I.II, quaest. 93, art. 4, ad 2, refers to *De vera religione* 31.57, 34 P.L., col. 147, while SUMMA THEOLOGICA I.II, quaest. 93, art. 6, obj. 3 refers to *De libero arbitrio* 1.6.15, 32 P.L., col. 1228, and *De civitate Dei* 19.12, 41 P.L., col. 640. Cf. SUMMA THEOLOGICA I.II, quaest. 106, art. 2, ad 3; quaest. 102, art. 1, obj. 2.

truly systematic and comprehensive treatment of the fundamental problems of legal philosophy undertaken by the Middle Ages.³⁹

After having defined the *lex aeterna*, St. Augustine proceeds to describe certain of its attributes. First of all, it is eternal. Thus in the *De libero arbitrio*, he asks his friend Evodius "whether or not this law [the *lex aeterna*] must appear to any intelligent person as being eternal and immutable?" And Evodius replies without hesitation: "I consider this law to be both eternal and immutable."⁴⁰ In the *De ordine*, St. Augustine refers to an eternal and ineffable law — the *lex aeterna* — which applies even to sinners and evil men.⁴¹ Aside from being eternal, the *lex aeterna* is also im-

³⁹ The high esteem in which the philosophy of law of St. Thomas Aquinas has been held even by modern non-Catholic scholars might be gathered from the following, 2 JÆRING, DER ZWECK IM RECHT 161 *et seq.* (3d ed. 1902): "This great mind [St. Thomas] correctly understood the realistic, practical and historical facts of moral life. . . In amazement I ask myself how is it possible that such truths, once they were uttered, could be forgotten so completely by our Protestant scholars? What false roads would have been avoided, had they taken these truths to heart. For my part, I would probably never have written my book [*Der Zweck im Recht*] had I known these truths. For the basic ideas I have occupied myself with are to be found in that gigantic thinker in perfect clearness and most pregnant formulation."

Köhler, in his LEHRBUCH DER RECHTSPHILOSOPHIE 38 (3d ed. 1923), remarks that "it is the immortal achievement of St. Thomas Aquinas . . . to have formulated the problem of natural law in a manner which is closest to truth." After having referred to the secular Natural Law tradition which followed in the wake of Grotius, Köhler exclaims, *id.* at 43: "How much wiser and profounder were the ideas of St. Thomas." The same Köhler, HOLTZENDORF-KÖHLER, ENZYKLOPAEDIE DER RECHTSWISSENSCHAFT 1.3 (7th ed. 1906), points out that "scholastic thought, particularly St. Thomas . . . constitutes the acme of jurisprudential discussion. . . ." Jerome Frank, in the foreword to the sixth edition of *Law and the Modern Mind*, states on page xvii: "I do not understand how any decent man today can refuse to adopt, as the basis of modern civilization, the fundamental principles of Natural Law, relative to human conduct, as stated by Thomas Aquinas." When, on the other hand, Professor Barrett asserts that Blackstone probably had read carefully St. Thomas' treatise on law, he is certainly embarking upon plain fiction. Barrett, *Confession and Avoidance?—Reflections on Re-reading Judge Frank's Law and the Modern Mind*, 24 NOTRE DAME LAWYER 447, 458 (1949).

⁴⁰ *De libero arbitrio* 1.6.15, 32 P.L., col. 1229: "Evodius inquit: Video hanc [*scil.*, legem] aeternam esse et immutabilem."

⁴¹ *De ordine* 2.14.11, 32 P.L., col. 1000: "Namque omnis vita stultorum, quamvis per eos ipsos minime constant minimeque ordinata sit, per divinam tamen providentiam necessario rerum ordine includitur, et quasi quibusdam locis illa ineffabili et sempiterna lege dispositis, nullo modo esse sinitur, ubi esse non

mutable in that it "remains unchangeable and thus guides all that is changeable by a most sublime government."⁴² Again in the *De vera religione* he points out that ". . . the measure of order lives in the eternal truth; it is disturbed neither by the masses nor by the course of temporal events. For as a power it rises greatly above all space, and in its timelessness it stands immovably above all times."⁴³

The *lex aeterna*, however, is not merely eternal and immutable, but also all-encompassing. It governs all of creation without exception, and every creature is subject to it. For nothing can possibly remain outside the *lex aeterna* and the universal order⁴⁴ for which it stands: "Because the all-highest God governs everything which He Himself has created so excellently, there cannot be anything disorderly or lawless in the universe, whether we know this or not."⁴⁵ Essentially the same idea we find expressed once more in the *De civitate Dei*, where St. Augustine states: "In no manner can anything be kept outside the laws imposed by the all-highest Creator and Administrator, through Whom the peace and order of the universe is being administered."⁴⁶ Finally, in his *Contra Faustum Manichaeum*, St. Augustine

debet." *Contra Faustum Manichaeum* 22.27, 42 P.L., col. 419: "Nos vero secundum aeternam legem . . . iuste vivimus, si vivamus ex fide non ficta." Cf. CICERO, DE REPUBLICA 3.22; DE NATURA DEORUM 1.15; DE LEGIBUS 2.4.8; 2.4.10.

⁴² *De diversis quaestionibus LXXXIII*, quaestio 27, 40 P.L., col. 18: ". . . cum lex ipsa immutabilis maneat, et omnia mutabilia pulcherrima gubernatione moderetur." Cf. *De libero arbitrio* 1.6.15, 32 P.L., col. 1229, quoted in note 40 *supra*. Cf. CICERO, DE REPUBLICA 3.22.

⁴³ *De vera religione* 43.81, 34 P.L., col. 159: "Ipse autem ordinis modus vivit in veritate perpetua, nec mole vastus, nec protractione volubilis; sed potentia supra omnes locos magnus, aeternitate supra omnia tempora immobilis."

⁴⁴ *De ordine* 2.7.21, 32 P.L., col. 1004: "Nam ordinem esse dixisti quo Deus agit omnia. Nihil autem, ut video, non agit Deus: nam inde visum tibi est, nihil praeter ordinem posse inveniri." Cf. CICERO, DE NATURA DEORUM 2.30.75.

⁴⁵ *De diversis quaestionibus LXXXIII*, quaest. 27, 40 P.L., col. 18: "Summo enim Deo cuncta bene administrante quae fecit, nihil inordinatum in universo, nihilque iniustum est, sive scientibus sive nescientibus nobis."

⁴⁶ *De civitate Dei* 19.12.3, 41 P.L., col. 640: "Nullo modo tamen inde aliquid legibus summi illius Creatoris Ordinatorisque subtrahitur, a quo pax universitatis administratur." Cf. *De ordine* 1.4.11, 32 P.L., col. 983: ". . . serenissime intuenti [*scil.*, clarum est] nihil fieri sine causa . . . nihil fieri nisi certo causarum ordine. . . ."

once more makes it quite clear that everything created is under the sway of the *lex aeterna*:⁴⁷

The beastly nature does not sin, because it does not act contrary to the *lex aeterna*, to which it is subjected in a manner which makes it impossible for this beastly nature to participate spiritually in this *lex aeterna*. Likewise the sublime angelic nature does not sin, because it partakes of the *lex aeterna* in such a fashion that God alone becomes its joy, and thus this angelic nature abides by God's will without experiencing any temptation whatsoever . . . Man, however, must subject to his rational control what he has in common with animals, and subject to God what he has in common with the angels, until after having achieved moral perfection and immortality, he rises above the animals and attains the level of the angels.

In this manner the *lex aeterna* determines all creatures. The non-rational creatures as well as the rational creatures are subjected to it, the former without being conscious of this subjection. Evil too, St. Augustine opines, is subjected to the *lex aeterna*:⁴⁸

I do not believe that anything could happen outside the universal order of things. Evil itself, since it was somehow generated, did not originate through God's ordination. But justice would not admit that evil should remain outside the universal order of things, and hence forced and relegated it to its proper place.

According to St. Augustine, evil and sin are conscious defection from the universal order and the *lex aeterna* ⁴⁹ un-

⁴⁷ *Contra Faustum Manichaeum* 22.28, 42 P.L., col. 419: "Bestialis enim natura non peccat, quia nihil facit contra aeternam legem, cui sic subdita est, ut eius particeps esse non possit. Rursus angelica sublimis natura non peccat, quia ita particeps est legis aeternae, ut solus eam delectet Deus, cuius voluntati sine ullo experimento tentationis obtemperat. Homo autem . . . subdat sibi quod habet commune cum bestiis; subdat Deo quod habet commune cum Angelis: donec iustitia et immortalitate perfecta atque percepta, ab istis exaltetur, illis aequetur." Cf. CICERO, *DE OFFICIIS* 1.4.14.

⁴⁸ *De ordine* 2.7.23, 32 P.L., col. 1005: ". . . non puto nihil potuisse praeter Dei ordinem fieri, quia ipsum malum quod natum est, nullo modo Dei ordine natum est; sed illa iustitia id inordinatum esse non sivit, sed in sibi meritum ordinem redigit et compulit."

⁴⁹ *Contra Mendacium* 7.18, 40 P.L., col. 529: "Si quidem non solum ipsum furtum, verum etiam falsum testimonium, et adulterium, et omne opus malum non erit malum, sed bonum . . . quis ita dicat, nisi qui res humanas omnesque conatur mores legesque subvertere?"

derlying this order: "Sin is, therefore, any deed or word or desire which is contrary to the *lex aeterna* . . . and illicit is whatever this law prohibits. . . ." ⁵⁰ St. Augustine stresses in particular the fact that God detests evil or sin, because it disturbs the divinely ordained universal order, that is, the *lex aeterna* "which commands us to observe the natural order, and forbids us to disturb it." ⁵¹ For God loves this order which comprises ⁵² both good and evil: "For who would dare to deny, O Lord, that Thou governest everything in a most orderly manner?" ⁵³

The *lex aeterna*, which as the universal order also constitutes the *ratio aeterna* of all that is created, ⁵⁴ resides in every creature in a germinating manner. ⁵⁵ In other words, the *ratio aeterna* exists in every creature in the form of a *ratio seminaria* or *ratio seminalis*. This *ratio aeterna* becomes manifest in all created things, and does so in the form of "laws" which, in the final analysis, constitute the "inner nature" of these things. The *ratio aeterna*, or *lex aeterna*, reveals itself in every creature in form of the *lex naturalis*. St. Augustine explains this relationship of the universal order and the "inner order" of each individual thing or creature in the following way: "The *lex aeterna* becomes manifest in and through laws which are in full accord with this

⁵⁰ *Contra Faustum Manichaeum* 22.27, 42 P.L., col. 418: "Ergo peccatum est, factum vel dictum vel concupitum aliquid contra aeternam legem." *Id.* at 22.28, 42 P.L., col. 419: "Est autem illicitum, quod lex illa [*scil.*, aeterna] prohibet. . . ." Cf. *De musica* 6.11.30, 32 P.L., col. 1180: "Ut qui legem agere noluit, a lege agatur." *Epistola* 140.2.4, 33 P.L., col. 539: "Qui enim iniuste se ordinat in peccatis, iuste ordinatur in poenis."

⁵¹ *Contra Faustum Manichaeum* 22.27, 42 P.L., col. 418, quoted in note 32 *supra*.

⁵² St. Augustine might be here under the influence of 1 *Corinthians* 14.33: "For God is not the author of confusion, but of peace. . . ." Cf. *St. Matthew* 5.45: "For He [God] maketh His sun rise on the evil and on the good, and sendeth rain on the just and on the unjust."

⁵³ *De ordine* 1.5.14, 32 P.L., col. 984: "Quis neget, magnus Deus, inquit, te cuncta ordine administrare." Cf. CICERO, *DE LEGIBUS* 2.4.10.

⁵⁴ *De ordine* 1.10.28, 32 P.L., col. 991: "Ordo est . . . per quem aguntur omnia quae Deus constituit." Cf. CICERO, *DE NATURA DEORUM* 2.38.97; 2.40.101.

⁵⁵ In this fashion St. Augustine combines Plato's doctrine of the transcendental Ideas and the Stoic notion of the immanent "logos." Cf. MEYER, *DIE GESCHICHTE DER LEHRE VON DEN KEIMKRAEFTEN* 108 (1914).

admirable universal administration [*lex aeterna*]. And through these laws God knew how to order the creatures."⁵⁶ And in another place he points out that "the *lex aeterna* and the *ratio aeterna* exist in the divine intellect; and these direct all things to their proper end through consonant *media*."⁵⁷ The inner order of the universe, that is to say, the *lex aeterna* and the *ratio aeterna*, becomes manifest in the *rationes seminales* or *rationes seminaria* which are "in" the individual things. And these *rationes seminales*, these "seminal forms" or "germinating principles," constitute the "natural order" or nature of each and every individual creature. They are an essential part of the eternal plan by which the Divine Wisdom governs⁵⁸ the universe: "The *Verbum Dei* contains the *rationes aeternae* of everything that has been generated in time; and in Him is everything that has been created through the *Verbum*."⁵⁹ The *Verbum Dei* is the eternal cause not only of the universal order, but also of the "individual order" of every species and individual thing.

Aside from the *lex aeterna*, *ratio aeterna* or universal order, St. Augustine also speaks of a *summum bonum*, an *ipse bonum* or *incommutabile bonum* through which everything

⁵⁶ *De catechizandis rudibus* 18.30, 40 P.L., col. 333: "Novit enim Deus ordinare . . . inferiores partes creaturae suae convenientissimis et congruentissimis legibus admirandae dispositionis ornare."

⁵⁷ *De libero arbitrio* 1.5.11-1.7.17, 32 P.L., col. 1227-1231. Cf. CICERO, DE NATURA DEORUM 1.6.19; DE LEGIBUS 2.4.25: "Lex est ratio summi Jovis. . ."; *id.* at 1.6.

⁵⁸ *Quaestiones in Heptateuchum* 2.21, 34 P.L., col. 602: "Insunt enim corporeis rebus per omnia elementa mundi quaedam occultae seminariae rationes, quibus cum data fuerit opportunitas temporalis atque causalis, prorumpunt in species debitas suis modis et finibus . . . Deus vero solus verus creator est, qui causas ipsas et rationes seminarias rebus inseruit." Cf. *De genesi ad litteram* 10.20.35-36, 34 P.L., col. 424; *id.* at 10.21.37, 34 P.L., col. 425; *id.* at 4.33.51, 34 P.L., col. 318; *De Trinitate* 3.8.13, 42 P.L., col. 875: ". . . occulta quaedam semina in istis corporeis mundi huius elementis latent." See also CICERO, DE NATURA DEORUM 2.39; 2.34; 2.33.

⁵⁹ *De genesi ad litteram* 4.24.41, 34 P.L., col. 318: ". . . in ipso Verbo Dei . . . in quo sunt omnium, etiam quae temporaliter facta sunt, aeternae rationes, tamquam in eo per quod facta sunt omnia." Cf. *De civitate Dei* 5.11, 41 P. L., col. 153; CICERO, DE NATURA DEORUM 31.80.

that is created becomes good.⁶⁰ We might even say that with St. Augustine the full realization of this *summum bonum* constitutes the necessary prerequisite for a rational understanding of the meaning of "the good." It has already been pointed out that the *lex aeterna* is the "inner order" of all creation. But everything that is orderly — in other words, everything that complies with the *lex aeterna* and the universal order for which it stands — is at the same time "good" or "a good." The highest concept of the most perfect orderliness, the *lex aeterna*, is therefore declaratory of the *summum bonum*, that is, of God. This *summum bonum* is not only the source of all that is good and true, but constitutes itself the *bonum omni boni* and the *veritas omni veritatis*. Only through the *summum bonum* can any creature be called good,⁶¹ and in God the *summum bonum* and the *lex aeterna* are one and the same thing.⁶²

The moral significance of man's actions and volitions is not to be found in the "individual freedom" of these actions or volitions, but in the ultimate determination of man's conduct by the *lex aeterna* as well as by the realization of the *summum bonum*, that is, in man's complete submission to the eternal order, which is declaratory of the *summum bonum*. Thus in his definition of the *summum bonum* and, incidentally, of the *lex aeterna*, St. Augustine also upholds what the later Middle Ages would have called the *perseitas boni*, the absolute and objective nature of all basic moral norms or laws.⁶³

⁶⁰ Cf. *De Trinitate* 8.5.8, 42 P.L., col. 953; *id.* at 13.9.12, 42 P.L., col. 1023; *id.* at 14.18.24, 42 P.L., col. 1055; *Confessions* 1.1, 32 P.L., col. 661; *De quantitate animae* 33.70 ff., 32 P.L., col. 1075-77. Thus it might be said that with St. Augustine ethics is in fact a doctrine of the highest good, a view which he inherited from antiquity.

⁶¹ *De Trinitate* 8.3-4, 42 P.L., col. 949-52.

⁶² *De vera religione* 11.21, 34 P.L., col. 131; *De libero arbitrio* 2.9.26, 32 P.L., col. 1254; *De Trinitate* 14.15.21, 42 P.L., col. 1051-52. Cf. CICERO, *DE LEGIBUS* 1.17: "Ipsium enim bonum non est opinionibus, sed natura." *Id.* at 1.16.

⁶³ Cf. *Contra Mendacium* 7.18, 40 P.L., col. 529, quoted in note 49 *supra*.

The *lex naturalis*, according to St. Augustine, is the conscious participation of rational man in the *lex aeterna*. By *lex naturalis* he understands, above all, the *lex rationis* or "law of reason."⁶⁴ This *lex rationis* is, however, but one aspect of the "general law of nature" which, as regards rational and moral man, signifies above all the *lex naturalis moralis* addressed to rational and moral man. The *lex naturalis moralis* or *lex naturalis* is imprinted or impressed on man's soul or heart, and is thus the imprint of the *lex aeterna* on his rational soul. To state it differently, the *lex aeterna* is the objective and absolute *apriori* of everything that might be called morally good, while the *lex naturalis (moralis)* signifies the "subjective" moral *apriori*, that is, the form in which the objective, infinite and absolute moral *apriori*, the *lex aeterna*, can be apprehended by rational man. "The *lex naturalis* is . . . transcribed on the rational soul of man";⁶⁵ and it "is also in the reason of man, because he already makes use of his free will; and it is written into his heart in a most natural manner."⁶⁶

The fundamental precepts of the *lex naturalis* are known to all men capable of right reasoning, no matter how depraved they may be, because God, Who wrote the *lex naturalis* into the hearts of men, speaks to everyone. Hence no one, not even the heathens, can plead ignorance of the *lex naturalis*. Their moral conscience, which can never be silenced, is their law.⁶⁷ Thus everyone, believer as well as

⁶⁴ *Epistola* 157.3.18, 33 P.L., col. 683.

⁶⁵ *De diversis quaestionibus LXXXIII*, quaest. 53.2, 40 P.L., col. 36: ". . . transcripta est naturalis lex in animam rationalem. . . ." *De libero arbitrio* 1.6.15, 32 P.L., col. 1229. Cf. CICERO, *DE LEGIBUS* 1.10.30: "Quaequae in animis imprimuntur, de quibus ante dixit, inchoata intelligentiae, similiter in omnibus imprimuntur, interpresque mentis oratio verbis discrepat, sentiis congruens." *DE FINIBUS BONORUM ET MALORUM* 5.21.59; *DE REPUBLICA* 3.20. See also ST. THOMAS AQUINAS, *SUMMA THEOL.* I.II, quaest. 93, art. 2.

⁶⁶ *Epistola* 157.3.15, 33 P.L., col. 681: ". . . lex est etiam in ratione hominis qui iam utitur arbitrio libertatis, naturaliter in corde conscripta. . . ." Cf. *De spiritu et littera* 21.36, 44 P.L., col. 222; *id.* at 17.30, 44 P.L., col. 219; *id.* at 26.44, 44 P.L., col. 227; *id.* at 26.46, 44 P.L., col. 229.

⁶⁷ *De sermone Dei in monte* 2.9.32, 34 P.L., col. 1283: "Nam quando illi valent intellegere, nullum esse animam, quamvis perversam, quae tamen ullo modo

unbeliever, is called upon by his moral conscience to recognize the existence of the *lex naturalis*. Hence even the heathens have devised a number of most useful moral precepts. These precepts are, in turn, the result of the working of the Divine Providence which permeates everything, including the unbeliever.⁶⁸ The *lex naturalis* is also called the *lex intima*, because it is written into the innermost heart of man. Through his commandments, God calls men back to the *lex naturalis* which they try so often to escape.⁶⁹ The rational soul, illuminated by the Divine Light and through the proper use of its natural reason, counsels itself in moral matters, for the soul can read in itself that which it ought to do and ought not to do.⁷⁰ This is the reason why even the godless think of eternity, and why they often praise or condemn correctly certain *mores*.⁷¹ In no man, no matter how depraved he may be morally, has the image of God been blurred by vice to such an extent that he can no longer distinguish at least the general contours of the *lex naturalis*.⁷²

ratiocinari potest, in cuius conscientia non loquatur Deus? Quis enim scripsit in cordibus hominum naturalem legem, nisi Deus?" St. Augustine refers here to St. Paul, *Epistle to the Romans* 2.14-15.

⁶⁸ *De doctrina Christiana* 2.40.60, 34 P.L., col. 63: "Sed de quibusdam quasi metallis divinae providentiae, quae ubique infusa est, eruerunt [scil., ethnici]. . . ."

⁶⁹ *Enarratio in psalmum* 57.1, 36 P.L., col. 673: "Data est enim conscripta lex: non quia in cordibus scripta non erat; sed quia tu fugitivus eras cordis tui, ab illo qui ubique est comprehenderis, et ad teipsum intro revocaris. Propterea scripta lex quid clamat eis qui deseruerunt legem scriptam in cordibus suis? . . . Redite praevaricatores ad cor."

⁷⁰ *Enarratio in psalmum* 145.5, 37 P.L., col. 1887-88: "Consilium sibi ex luce Dei dat ipsa anima per rationalem mentem, unde concipit consilium fixum in aeternitate auctoris sui. Legit ibi quiddam tremendum, laudandum, amandum, desiderandum et appetendum."

⁷¹ *De Trinitate* 14.15.21, 42 P.L., col. 1052: "Nam . . . etiam impii cogitant aeternitatem, et multa recte reprehendunt recteque laudant in hominum moribus. . . . Ubinam sunt istae regulae scriptae? . . . Ubi ergo scriptae sunt, nisi in libro lucis illius quae veritas dicitur? unde omnis lex iusta describitur, et in cor hominis qui operatur iustitiam, non migrando, sed tamquam imprimendo transfertur; sicut imago ex annulo in ceram transit, et anulum non relinquit."

⁷² *De spiritu et littera* 28.48, 44 P.L., col. 230: "Verumtamen quia non usque adeo in anima humana imago Dei terrenorum affectuum labe detrita est, ut nulla in ea velut lineamenta extrema remanserint, unde merito dici possit etiam in ipsa impietate vitae suae facere aliqua legis vel sapere. . . ." Cf. *Epistola* 157.3.15-21, 33 P.L., col. 681-5, where we are told that the *lex naturalis* is a *lex rationis* which cannot be deleted even by iniquity.

But in the hearts of the just and pure, the voice of the *lex aeterna* always remains most articulate,⁷³ and the just and pure of heart listen to this voice and thus know what they may do and what they may not do.⁷⁴

Thus we find within ourselves the basic norms or precepts of the *lex naturalis*, and with them the fundamental principle of justice. According to St. Augustine, the principle of Natural Justice "is a habit of the rational soul . . . which renders everyone his proper dignity [or due], but which in doing so, always considers the principle of common usefulness."⁷⁵ In its true nature, justice, or for that matter, law (*ius*) as such, "cannot be the result of mere personal opinion, but must be something which is implanted in man by a certain innate power."⁷⁶ Hence, as regards the rational soul, the principle of justice is something as self-evident as the *lex aeterna* or the *lex naturalis*, and not even the great-

⁷³ *De vera religione* 31.58, 34 P.L., col. 148: "Aeternam igitur legem mundis animis fas est cognoscere, iudicare non fas est." Cf. *Sermo de Scripturis* 81.2, 38 P.L., col. 500: "... manebat adhuc lex aeterna in cordibus piorum. ..."

⁷⁴ *Quaestiones in Heptateuchum* 2.67, 34 P.L., col. 618: "... lex Dei . . . quam consulunt omnes piae mentes, ut quod in ea invenerint, vel faciant, vel iubeant, vel vetent, secundum quod illa incommutabili veritate praeceperit."

⁷⁵ *De diversis quaestionibus LXXXIII*, quaest. 31.1, 40 P.L., col. 20: "Iustitia est habitus animi, communi utilitate conservata, suam cuique tribuens dignitatem." St. Augustine then continues: "Eius initium est ab natura profectum: deinde quaedam in consuetudinem ex utilitatis ratione venerunt: postea res et ab natura profectas et ab consuetudine probatas, legum metus et religio sanxit." It should be noted here that "justice" is defined in the *Digest* of Justinian, DIGEST 1.1, *de iustitia et iure* 10 (*Ulpian lib. 1 regularum*), and the *Institutes*, INSTITUTES 1.1, *de iustitia et iure*, as follows: "iustitia est constans et perpetua voluntas ius suum cuique tribuens." Compare Cicero, from whom St. Augustine probably borrowed his definition, CICERO, RHETORICA (DE INVENTIONE) 2.160: "Justice is a habit of the soul [*habitus animi*] which . . . renders to every one his dignity"; DE FINIBUS 5.23: "[Iustitia dicitur] . . . animi affectio suum cuique tribuens"; AD HERENNIUM 3.3 (authorship doubtful): "Iustitia est aequitas, ius cuique tribuens pro dignitate cuiusque." The Roman jurists consults, cf. ULPIAN, REGULARUM LIBRI VII, 1.10, translated the essentially Stoic nomenclature of Cicero into legal terminology. Thus the Ciceronean "habitus animi," DE INVENTIONE 2.160, or the "animi affectio," DE FINIBUS 5.23, becomes with Ulpian the "constans et perpetua voluntas"; and the Ciceronean "dignitas," RHETORICA 2.160; AD HERENNIUM 3.3, a "ius."

⁷⁶ *De diversis quaestionibus LXXXIII*, quaest. 31.1, 40 P.L., col. 20: "Natura ius est, quod non opinio genuit, sed quaedam innata vis inseruit." Cf. CICERO, DE LEGIBUS 2.4.8.

est malefactor can ever lose it completely.⁷⁷ Through the light of natural reason, we are aware of the existence of this principle, and with it of the *lex naturalis*, while our moral conscience always reminds us of the *lex aeterna*, which is at the bottom both of the *lex naturalis* and the principle of Natural Justice.⁷⁸ Natural Justice represents above all a realization of the universal order decreed by God and the rational compliance with it. Injustice is, therefore, the absence of a right conception of this universal order. Like everything evil, injustice is the lack of concord in the manifold relations of the various creatures to one another as well as in the relation of these creatures to God. It is, in other words, man's willful disturbance of the universal and divinely ordained order, which the *lex aeterna* expressly forbids.⁷⁹

What then, may we ask, is the content of the *lex naturalis*? We have already been told that Natural Justice consists in rendering everyone his due, the *suum cuique tribuere*, and that it must always refer to the common good or common utility. For reasons of the common good or common utility, certain aspects of the principle of Natural Justice, and hence also of the *lex naturalis*, turn in the course of history into custom and social tradition, until finally this principle of Natural Justice is sanctioned both by religion and fear of the law.⁸⁰ But we have still to ascertain what, according to St. Augustine's formula of Natural Justice, constitutes "everyone's own or due [*suum*]." ⁸¹ In order to define and explain

⁷⁷ *De Trinitate* 14.15.21, 42 P.L., col. 1051-52; *id.* at 12.15.24-25, 42 P.L., col. 1011-12. Like the *lex naturalis*, so also the *iustitia*—this "habitus animi"—is imprinted on the souls of men, an "imprint" which not even the worst iniquity can ever erase. Cf. *Confessions* 2.4.9, 32 P.L., col. 678; *Epistola* 157, 33 P.L., col. 674-93.

⁷⁸ *De Trinitate* 12.15.21, 42 P.L., col. 1051-52.

⁷⁹ *Contra Faustum Manichaeum* 22.27, 42 P.L., col. 418 *et seq.*, quoted in note 32 *supra*.

⁸⁰ *De diversis quaestionibus LXXXIII*, quaest. 31.1, 40 P.L., col. 20: "Iustitia . . . deinde quaedam in consuetudinem ex utilitatis ratione venerunt: postea res et ab natura profectas et ab consuetudine probatas, legum metus et religio sanxit."

⁸¹ *De diversis quaestionibus LXXXIII*, quaest. 31.1, 40 P.L., col. 20, quoted in note 75 *supra*.

the nature of this "*suum*" more precisely, St. Augustine once more refers to the natural, that is, ontological order of things to which all creatures are subjected. Natural Justice is, then, whatever contributes to the greatest possible orderliness — to the maintenance of the most perfect order as it is ordained by God Himself.⁸² In other words, the observation as well as the actualization of this sublime order is the ultimate significance of the Augustinian concept of Natural Justice:⁸³

God ordered and made everything . . . and He ordered the whole of creation after the manner of certain degrees or steps, proceeding from the earth to the heavens; from the visible to the invisible; and from the mortal to the immortal. This harmonious interrelation or interaction of the whole of creation — this most orderly beauty, ascends from the lowliest to the most sublime and, at the same time, descends from the most sublime to the lowliest. Nowhere is this harmonious interrelation disrupted, for despite all its dissimilarities, it always remains perfectly balanced. And this sublime orderly beauty in its entirety praises God.

In conformity with the idea that Natural Justice is essentially the observance of the divinely ordained order by rendering to everyone his due, St. Augustine declares that the rule, "do nothing unto another you would not have done unto yourself," constitutes a second definition of the basic meaning or content of the *lex naturalis* and Natural Justice: "The *lex naturalis*, which is by nature inscribed on the hearts of men, is also in the intellect of man who already makes use of his free will. And this law tells man that he

⁸² *De libero arbitrio* 1.6.15, 32 P.L., col. 1229: "Ut igitur . . . legis notionem, quae impressa nobis est, quantum valeo verbis explicem, ea est qua iustum est ut omnia sint ordinatissima." Cf. *Enarratio in psalmum* 145.5, 37 P.L., col. 1887-88, quoted in note 70 *supra*. See also CICERO, *DE OFFICIIS* 1.4.14.

⁸³ *Enarratio in Psalmum* 144.13, 37 P.L., col. 1878: "Deus ordinavit omnia, et fecit omnia . . . et gradibus quibusdam ordinavit creaturam, a terra usque ad coelum, a visibilibus ad invisibilia, a mortalibus ad immortalia. Ista contextio creaturae, ista ordinatissima pulchritudo, ab imis ad summa conscendens, a summis ad ima descendens, nusquam interrupta, sed dissimilibus temperata, tota laudet Deum." Cf. *De civitate Dei* 19.12.3, 41 P.L., col. 640: "Nullo modo tamen inde aliquid legibus summi illius Creatoris Ordinatorisque subtrahitur, a quo pax universitatis administratur."

should do nothing unto another he would not have done unto himself.”⁸⁴ Thus in all our dealings with our fellow men we must always observe the Golden Rule which, according to St. Augustine, constitutes the “practical” aspect of the basic principle or precept of Natural Law and Natural Justice.⁸⁵ The two moral precepts, namely, to render to everyone his due, and to do nothing unto another you would not have done unto yourself, are therefore for St. Augustine what St. Thomas Aquinas later called the primary principles of Natural Law.⁸⁶ Every other precept of Natural Law is essentially nothing but a conclusion from these first two principles.

According to St. Augustine, the *lex aeterna* is also the immutable norm or standard of all human or temporal laws. Hence nothing may be called lawful or just in a moral sense which is not derived from the *lex aeterna*, the source of all lawfulness and justice.⁸⁷ A good and wise lawgiver, therefore, will always shape his laws after the *lex aeterna*, the absolute and eternal model of all that might be called lawful and just. It is the *lex aeterna* which suggests to the good lawmaker what, in the light of local and temporal circumstances, he may command and what he may prohibit.⁸⁸ All

⁸⁴ *Epistola* 157.3.15, 33 P.L., col. 681: “Lex est etiam in ratione hominis, qui iam utitur arbitrio libertatis, naturaliter in corde conscripta, qua suggeritur, ne aliquid faciat quisque alteri, quod pati ipse non vult.” Cf. *De ordine* 2.8.25, 32 P.L., col. 1006: “In omni vero contractu atque conversatione cum hominibus, satis est servare unum hoc vulgare proverbium: Nemini faciant quod pati nolunt.” *Enarratio in Psalmum* 118, sermo 25.4, 37 P.L., col. 1574; *De doctrina Christiana* 3.14.22, 34 P.L., col. 74.

⁸⁵ *De ordine* 2.8.25, 32 P.L., col. 1006, quoted in note 84 *supra*.

⁸⁶ St. THOMAS, *SUMMA THEOL.* I. II, quaest. 94, art. 2 and art. 4.

⁸⁷ *De libero arbitrio* 1.6.15, 32 P.L., col. 1229: “Simul etiam te videre arbitror in illa temporali [*scil.*, lege] nihil iustum atque legitimum, quod non ex hac aeterna [*scil.*, lege] sibi homines derivarint: nam si populus ille quodam tempore iuste honores dedit, quodam rursus iuste non dedit; haec vicissitudo temporalis, ut iusta esset, ex illa aeternitate tracta est, qua semper iustum est gravem populum honores dare, levem non dare . . . Cum ergo haec sit una lex, ex qua illae omnes temporales [*scil.*, leges] ad homines regendos variantur, num ideo ipsa variari ullo modo potest?” Cf. *De civitate Dei* 19.21.1, 41 P.L., col. 649.

⁸⁸ *De vera religione* 31.58, 34 P.L., col. 148: “Conditor tamen legum temporalium, si vir bonus est et sapiens, illam ipsam consulit [*scil.*, legem] aeternam, de qua nulli animae iudicare datum est; ut secundum eius incommutabiles regulas, quid sit pro tempore iubendum vetandumque discernat.”

human laws which are not derived from, or sanctioned by the *lex aeterna* are unjust laws, and in principle we should refrain from abiding by such unjust laws.⁸⁹

Temporal or human laws, at least just human laws, are above all images of the *lex aeterna*. Although these temporal laws devised to govern men are many and varied, the one single law or norm from which they are derived, that is to say, from which they receive their authoritative nature, is eternally immutable.⁹⁰ We may ask here the question: why should the human race stand in need of temporal laws, particularly since all men, as rational creatures, not only have the *lex naturalis* implanted in, or imprinted on their hearts or souls, but also are, through their *naturalis ratio*, capable of drawing proper inferences from the first principles or precepts of the *lex naturalis*? St. Augustine, fully prepared to meet this particular issue, points out that originally the law — the Natural Law — was not written down. Since it was infused into man's nature by God Himself and hence known to all, there was no need for a written law, a *lex formata in literis*, that is, a human or temporal law. But later, because of man's evil inclinations and vices, the *lex aeterna* and the *lex naturalis* gradually became "obscured" in the minds of men and its knowledge extremely vague. Thus is also lost its hold over the hearts of men. In other words, with the fall of man and man's subsequent wickedness, the human or temporal law became a necessity. The temporal law or laws had to be proclaimed by man to man in order that there might be again a moral or legal authority. And with the

⁸⁹ *Epistola* 105.2.7, 33 P.L., col. 398: "Imperatores enim si in errore essent . . . pro errore suo contra veritatem leges darent . . . non faciendo quod illi iuberent, quia Deus prohiberet." Obviously, this passage is under the influence of *St. Matthew* 22.21: "Render unto Caesar the things which are Caesar's, and unto God the things which are God's."

⁹⁰ *De libero arbitrio* 1.6.15, 32 P.L., col. 1229: "Cum ergo haec sit una lex, ex qua illae omnes temporales [*scil.*, leges] ad homines regendos variantur, num ideo ipsa variari ullo modo potest?" Cf. CICERO, *DE LEGIBUS* 1.6: "Constituendi vero iuris ab illa summa lege capiamus exordium, quae seculis omnibus ante nata est, quam scripta lex ulla, aut quam omnino civitas constituta." *Id.* at 2.4.25.

promulgation of the temporal law, that is, the just temporal law, the *lex naturalis*, which gradually had been obscured through sin and evil deeds, once more becomes manifest and authoritative.⁹¹

Since man is what he is, particularly after his fall, neither the *lex aeterna* nor the *lex naturalis* makes the human or temporal law superfluous. On the contrary, St. Augustine himself asserts that the *lex naturalis*, in order to actualize itself more fully in history, stands in need of the human or temporal law.⁹² The plurality and diversity of the different positive legal systems which we encounter in history, as well as the many historical changes within one and the same legal system are, however, no proof against the singleness and immutability of the *lex aeterna* and the *lex naturalis*.⁹³ Neither do they disprove the fact that all human laws — the just human laws at least — are derived from the single *lex aeterna* and *lex naturalis*. The human law or laws, to be sure, ignore and even tolerate many things prohibited by the *lex aeterna* and the *lex naturalis*.⁹⁴ Although this is a most regrettable situation, St. Augustine points out quite realistically that the human or temporal laws do not concern themselves primarily with the promotion of virtue and the virtuous life, but are primarily intended 'to preserve peace and order by preventing or punishing the worst abuses and the crudest maladjustments which might endanger this

⁹¹ *Epistola* 157.3.15, 33 P.L., col. 681; *De vera religione* 31.58, 34 P.L., col. 148; *Sermo* 125.2, 38 P.L., col. 689; *Sermo* 154.1, 38 P.L., col. 833; *Sermo* 155.3.3, 38 P.L., col. 842; *Sermo* 156.2.2, 38 P.L., col. 850-51; *Sermo* 170.1.1, 38 P.L., col. 927; *Contra Faustum Manichaeum* 19.7, 42 P.L., col. 351.

⁹² *De vera religione* 31.58, 34 P.L., col. 148.

⁹³ *De doctrina Christiana* 3.14.22, 34 P.L., col. 74: "Qua varietate innumerabilium consuetudinum commoti quidam dormitantes, ut ita dicam . . . putaverunt nullam esse iustitiam per seipsam, sed unicuique genti consuetudinem suam iustam videri: quae cum sit diversa omnibus gentibus, debeat autem incommutabilis manere iustitia, fieri manifestum nullam usquam esse iustitiam. Non intellexerunt, ne multa commemorem, quod tibi fieri non vis, alii ne feceris, . . . nullo modo posse ulla eorum gentili diversitate variari." Cf. *De libero arbitrio* 1.6.15, 32 P.L., col. 1229; *De civitate Dei* 19.17, 41 P.L., col. 646.

⁹⁴ *De civitate Dei* 15.16.2, 41 P.L., col. 459; *De libero arbitrio* 1.5.13, 32 P.L., col. 1228; *id.* at 1.5.14-16, 32 P.L., col. 1228-29.

peace.⁹⁵ For it is of the essence of the temporal legal order to preserve civil peace and to secure through this peace the harmonious existence and maintenance of secular society.⁹⁶

According to St. Augustine, the State is "a multitude of human or rational beings bound together by a certain social tie," that is, by the bonds of concord, and subject to one and the same laws.⁹⁷ He defines the idea of social order under the rule of law as "that disposition which assigns to equal as well as unequal things their proper places."⁹⁸ For the rational and harmonious order of all things, including the secular State or temporal rule of law, requires not only a diversity of men, but also a disparity in the treatment of different or unlike people, "because thus did God make man."⁹⁹ A well adjusted and properly ordered society, that is, a peaceful society, consists in the concord of all citizens in which

⁹⁵ *De libero arbitrio* 1.5.13, 32 P.L., col. 1228: "Videtur enim tibi lex ista, quae regendis civitatibus fertur, multa concedere atque impunitè relinquare, quae per divinam tamen providentiam vindicantur; et recte. Neque enim quia non omnia facit, ideo quae facit improbanda sunt." Cf. *Epistola* 153.6.26, 33 P.L., col. 665: ". . . iura . . . civilia . . . non quid hinc fiat, ut bene utentes sint, sed ut male utentes minus molesti sint." *Ibid.*: "Si quae leges [scil., temporales] adversus vos constitutae sunt, non eis bene facere cogimini, sed male facere prohibimini."

⁹⁶ *De libero arbitrio* 1.15.31 ff., 32 P.L., col. 1257-58; *De civitate Dei* 19.14, 41 P.L., col. 642; *id.* at 19.17, 41 P.L., col. 645.

⁹⁷ *De civitate Dei* 15.8.2, 41 P.L., col. 447: ". . . civitas . . . nihil aliud est quam hominum multitudo aliquo societatis vinculo colligata." *Id.* at 19.21.2, 41 P.L., col. 649; *Quaestiones X Evangeliae* 2.46, 35 P.L., col. 1360: "Est enim civitas, non quorumlibet animantium, sed rationalium multitudo, legis unius societate devincta." *De civitate Dei* 19.24, 41 P.L., col. 655: "Populus est coetus multitudinis rationalis, rerum quas diligit concordii communione societatus." *Id.* at 19.17, 41 P.L., col. 645; *Epistola* 138.2.10, 33 P.L., col. 529: "Quid est autem civitas, nisi multitudo hominum in quoddam vinculum redacta concordiae." *Epistola* 155.3.9, 33 P.L., col. 670. ". . . cum aliud civitas non sit, quam concors hominum multitudo." All these definitions of the State are obviously a reflection of the influence of Cicero. CICERO, *DE REPUBLICA* 3.25.29.

⁹⁸ *De civitate Dei* 19.13.1, 41 P.L., col. 640: "Ordo est parium dispariumque rerum sua cuique loca tribuens dispositio." This Augustinian definition may be considered one of the truly great legacies of the ancient world, since it was to become, through the authority of St. Augustine, the basic tenet of all social, legal, and political thinking of the Middle Ages. Cf. Chroust, *The Function of Law and Justice in the Ancient World and the Middle Ages*, 7 *JOURNAL OF THE HISTORY OF IDEAS* 298 (1946); Chroust, *The Corporate Idea and the Body Politic in the Middle Ages*, 9 *REVIEW OF POLITICS* 437 (1947).

⁹⁹ *De civitate Dei* 19.15, 41 P.L., col. 643. Cf. in general, *Id.* at 19.14-19.16, 41 P.L., col. 642-45.

the power or right to rule and the duty to obey are perfectly balanced.¹⁰⁰ For it is obvious that "it is good for some to serve or obey in particular, while it is good for all to serve God in general."¹⁰¹

The *civitas Dei* as well as the secular or political State both exist side by side in this world. They must collaborate in many ways.¹⁰² Both are confronted with similar problems, and both have to combat similar evils.¹⁰³ The universal peace and order maintained and secured by the secular State is of the greatest importance to the *civitas Dei* and its ultimate achievement on earth.

The laws of the secular State, like all human or temporal laws, find their ultimate justification in the *lex aeterna* and the *lex naturalis*. The purpose of the secular State is to subject a multitude of men to one single and uniform legal order so that peace may reign among them. So far as this legal or political order does not contradict the express commands of God, that is to say, so far as it is in conformity with the *lex aeterna* and the *lex naturalis*, it rests upon divine ordination¹⁰⁴ in that it serves the maintenance of universal peace and order and thus is itself part of the universal order and harmony expressed by the *lex aeterna*. But "there is nothing in the temporal law that could be called just or legitimate, unless the citizens derived it from the *lex aeterna*."¹⁰⁵ Hence we should ignore in principle all those human laws which do not flow from this eternal "fountain of all justice." In other words, the lawgiver has to promulgate the

¹⁰⁰ *De civitate Dei* 19.13.1, 41 P.L., col. 640: "Ordinata imperandi obediendique concordia civium." *Id.* at 19.16, 41 P.L., col. 645; 19.7, 41 P.L., col. 643; 18.2.1, 41 P.L., col. 559: "Societas . . . mortalium diffusa [*scil.*, per terras et in locorum quantislibet diversitatibus], unius tamen eiusdem naturae quadam communione devincta. . . ."

¹⁰¹ *De civitate Dei* 19.21.2, 41 P.L., col. 649: ". . . quibusdam esse utilem servitutem; et Deo quidem ut serviatur, utile est omnibus." Cf. *Id.* at 19.16, 41 P.L., col. 644.

¹⁰² *De civitate Dei* 19.17, 41 P.L., col. 645-46; *id.* at 19.4, 41 P.L., col. 642.

¹⁰³ Cf. *De civitate Dei* 15.2, 41 P.L., col. 439; *id.* at 18.54.2, 41 P.L., col. 620; *id.* at 18.2.1, 41 P.L., col. 559.

¹⁰⁴ *De civitate Dei* 19.14, 41 P.L., col. 642-43.

¹⁰⁵ *De libero arbitrio* 1.6.15, 32 P.L., col. 1229, quoted in note 87 *supra*.

temporal law or temporal laws "according to immutable norms; and according to these eternal rules he has also to determine what for the time being should be commanded, and what should be forbidden."¹⁰⁶

The very foundation of the legal and political order rests on the natural, divinely ordained and instituted order of all things. Within this universal order, God has endowed man with an intellect as well as a social nature. It is this intelligent and social nature of man which compels him to form, or enter into unions such as the family or the secular State.¹⁰⁷ Thus the intelligent and social nature of man is at the basis of all social institutions, and for this very reason the individual always remains the basic and essential element¹⁰⁸ of every secular State: "In the same manner as the single letter is the basic element of a phrase, so the individual is the fundamental constituent of the State."¹⁰⁹ The natural social "disposition" of intelligent man, in other words, the law of nature itself, induces or forces man to enter into associations with other men in order to maintain peace and thus promote the universal harmony exemplified in the *lex aeterna*.¹¹⁰ For, as St. Augustine says, nothing is as "socially minded" as the human race which through sin and evil inclinations suddenly finds itself torn asunder by strife and mutual hatred.¹¹¹ Thus by their very natures men

¹⁰⁶ *Quaestiones in Heptateuchum* 2.67, 34 P.L., col. 618, quoted in note 74 *supra*. Cf. *De vera religione* 31.58, 34 P.L., col. 148.

¹⁰⁷ *De civitate Dei* 19.12.2, 41 P.L., col. 639: "Quando magis homo fertur quodammodo naturae suae legibus ad ineundum societatem pacemque cum hominibus, quantum in ipso est, omnibus obtinendum, cum etiam mali pro suorum pace belligerent." Cf. CICERO, *DE REPUBLICA* 1.25.39: "Eius autem prima causa coeundi est . . . naturalis hominum congregatio." *DE FINIBUS* 5.23; *DE OFFICIIS* 2.21.

¹⁰⁸ *Enarratio in psalmum* 9.8, 36 P.L., col. 121: "[Singuli homines] . . . sunt tanquam elementa et semina civitatum." Cf. CICERO, *DE FINIBUS* 5.23.65: "homines seminarium rei publicae." *DE OFFICIIS* 1.17.54.

¹⁰⁹ *De civitate Dei* 4.3, 41 P.L., col. 114: "Nam singulus quisque homo, ut in sermone una littera, ita quasi elementum est civitatis et regni." Cf. CICERO, *DE OFFICIIS* 1.17.54.

¹¹⁰ *De civitate Dei* 19.12.2, 41 P.L., col. 639, quoted in note 107 *supra*.

¹¹¹ *De civitate Dei* 12.27, 41 P.L., col. 376: "Nihil enim est quam hoc-genus tam discordiosum vitio, tam sociale natura."

have a natural disposition to live within legally and politically organized society.¹¹²

The institution of the family is the first manifestation or fruit of the natural social urge of intelligent man. The family constitutes the germ cell of the secular State; it is the smallest unit within the larger unit of the State. And as every beginning already refers to the ultimate end, so the domestic peace and harmony presages the peace and harmony which the secular State provides and secures. By the same token, the authority of the parents and the duty of the children to submit to this authority presage the legal-political authority of the secular State over its subjects, as well as the duty of the citizens to respect this authority.¹¹³ In short, the secular State and the legal order which it represents is essentially nothing else than a natural evolution of the same principle which is the basis for the family and the domestic order. Children must obey the commands of their parents unless their commands run contrary to the laws of the State; and the citizens must abide by the laws of the State unless its laws are opposed to the commands of God.¹¹⁴ This, according to St. Augustine, is the natural order of things as ordained and commanded by God Himself; and only in and through this order can we establish and secure that peace and harmony which God intended for all men. In other words, the secular State and the legal-political order are intended to satisfy the general human desire for peace

¹¹² *Opus imperfectum contra Julianum* 6.12, 45 P.L., col. 1522.

¹¹³ *De civitate Dei* 19.16, 41 P.L., col. 644-45: "Quia igitur hominis domus initium sive particula debet esse civitatis, omne autem initium ad aliquem sui generis finem, et omnis pars ad universi, cuius pars est, integritatem refertur: satis apparet esse consequens, ut ad pacem civicam pax domestica referatur, id est, ut ordinata imperandi obediendique concordia cohabitantium referatur ad ordinatam imperandi obediendique concordiam civium. Ita fit, ut ex lege civitatis praecepta sumere patrefamilias oporteat, quibus domum suam sic regat, ut sit paci accomodata civitatis."

¹¹⁴ *Sermo* 62.5.8, 38 P.L., col. 418: "Primi enim tibi sunt pater et mater: si recte educantes, si in Christum nutriendes, audiendes; audiendi in omnibus . . . Maior sit patria et ipsis parentibus tuis; ut quidquid iusserint parentes contra patriam, non audiantur. Et quidquid iusserit patria contra Deum, non audiat."

and to accomplish at the same time the Will of God, Who wants us to live in peace and harmony with one another. The secular State, therefore, must prevent above all any disturbance of the existing, that is, natural order of things,¹¹⁵ but without attempting to remedy every injustice which might exist.¹¹⁶ As has already been pointed out, it is of the essence of the human or temporal law, and hence also of the secular State, to prevent only the worst excesses and to restrain only the greatest evildoers. Hence the secular State enacts certain temporal laws, not in order to make its citizens virtuous or pious men, but solely to deter the worst malefactors.¹¹⁷ Human law is made by human beings, although after the model of the *lex aeterna* or the *lex naturalis*; as such it is primarily an instrument for the control of the secular affairs of man.¹¹⁸ Through human laws, the secular State guarantees the maintenance of human society and the social institutions of man.¹¹⁹

The peace, harmony and order which the secular State guarantees is an essential part of the universal peace and harmonious order decreed by God Himself. The true peace of every individual human being consists in his submission to the universal order or *lex aeterna*, in other words, to the Will of God.¹²⁰

The peace of secular man in particular, on the other hand, consists in the harmonious and orderly concord of all human beings within a legally and politically organized society. The domestic peace, finally, consists in the orderly harmony and

¹¹⁵ *De doctrina Christiana* 2.25.40, 34 P.L., col. 55: "Sed haec tota pars humanorum institutorum, quae ad usum vitae necessarium proficiunt, nequaquam est fugienda christiano." *Id.* at 2.39.58, 34 P.L., col. 62: "Illa vero instituta hominum, quae ad societatem conviventium valent, pro ipsa huius vitae necessitate non negligant." Cf. *De civitate Dei* 19.21.2, 41 P.L., col. 649; *Epistola* 153.6.16, 33 P.L., col. 660.

¹¹⁶ *Epistola* 153.6.26, 33 P.L., col. 665, quoted in note 95 *supra*.

¹¹⁷ *Epistola* 153.6.26, 33 P.L., col. 665, quoted in note 95 *supra*.

¹¹⁸ *De civitate Dei* 15.16.2, 41 P.L., col. 459.

¹¹⁹ *De libero arbitrio* 1.15.32, 32 P.L., col. 1238. Cf. *Id.* at 1.15.33, 32 P.L., col. 1239.

¹²⁰ *De civitate Dei* 19.13.1, 41 P.L., col. 640: "Pax hominis mortalis et

balance that exists between the right to command and the duty to obey, a balance which must exist among those who live in very close associations. The peace of politically and legally organized society, again, consists in the proper and orderly distribution of ruler and ruled among the citizens.

And all this is ordained by God, "the Creator of all things, Who is at the same time the wisest and most just of all orderers."¹²¹ In this fashion St. Augustine relates to God, the wisest Creator and most just Administrator of all things, the temporal law and the secular State which protect and secure all human institutions. He also derives directly from the Divine Will the right to command and the duty to obey, as well as the distribution of these rights and duties, since, according to St. Augustine, "there is no power but of God."¹²² And in another place he states quite definitely that "the eternal truth proclaims its commands through the heart of the king; and if the rulers command what is good, then no one else speaks through them than Christ."¹²³ Even the power of the tyrant is from God, because God gives power both to good and evil rulers, according to His Will.¹²⁴ The many kingdoms and empires have actually been founded by Divine Providence,¹²⁵ since we cannot assume that God, the Creator of the universal order, intended to exempt from His

Dei immortalis, ordinata in fide sub aeterna lege obedientia. Pax hominum, ordinata concordia. Pax domus, ordinata imperandi atque obediendi concordia cohabitantium. Pax civitatis, ordinata imperandi atque obediendi concordia civium . . . Pax omnium rerum, tranquillitas ordinis."

¹²¹ *De civitate Dei* 19.13.2, 41 P.L., col. 641: "Deus [scil., est] ergo naturarum omnium sapientissimus Conditor et iustissimus Ordinator."

¹²² *Epistola* 93.6.20, 33 P.L., col. 331.

¹²³ *Epistola* 105.3.11, 33 P.L., col. 400: "Hoc iubent imperatores, quod iubet et Christus; quia cum bonum iubent, per illos non iubet nisi Christus." *Id.* at 105.3.7, 33 P.L., col. 398: ". . . per cor regis ipsa veritas iussit."

¹²⁴ *De civitate Dei* 5.21, 41 P.L., col. 167: "Quae cum ita sint, non tribuamus dandi regni atque imperii potestatem, nisi Deo vero, qui dat felicitatem in regno coelorum solis piis; regnum verum terrenum et piis et impiis, sicut ei placet, cui nihil iniuste placet." Cf. *Id.* at 19.15, 41 P.L., col. 644: "Verum et poenalis servitus ea lege ordinatur, quae naturalem ordinem conservari iubet, perturbari vetat." *De bono coniugale* 14.16, 40 P.L., col. 384-85: "Nec vituperabilis ordo regiae potestatis, si rex crudelitate tyrannica saeviat."

¹²⁵ *De civitate Dei* 5.1, 41 P.L., col. 141: "Prorsus divina providentia regna constituuntur humana."

providential order the secular kingdoms.¹²⁶ As a matter of fact, according to St. Augustine, God gives mankind the whole of human or temporal laws through the mouths of emperors and kings.¹²⁷

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¹²⁶ *De civitate Dei* 5.21, 41 P.L., col. 167: "Nullo modo est credendus Deus regna hominum eorumque dominationes et servitutes a suae providentiae legibus alienas esse voluisse." *Id.* at 5.1, 41 P.L., col. 141. Cf. CICERO, DE REPUBLICA 3.22.

¹²⁷ *Tractatus in Joannis Evangelium* 6.25, 35 P.L., col. 1437: "Quia ipsa iura humana per imperatores et reges saeculi Deus distribuit generi humano."