

# The Eternal Law in Augustine's Early Investigation of Justice

Author: Adam Michael Thomas

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# The Eternal Law in Augustine's Early Investigation of Justice

Adam M. Thomas

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# **The Eternal Law in Augustine's Early Investigation of Justice**

Adam Thomas

Advisor: Dr. Robert C. Bartlett

## **Abstract:**

In my dissertation I seek to contribute to the revival of interest in Augustine's political thought by attempting to uncover his doctrine of eternal law. While absent from his mature writings, including the *City of God*, this doctrine is central to the investigation of justice in Augustine's early writings. After considering Augustine's summary of this early investigation in the *Confessions*, the most surprising feature of which is Augustine's insistence on the importance of specifically political questions to his mature understanding of justice, I take up the two treatments of eternal law. In the dialogue *On Free Choice*, the eternal law is contrasted with the temporal law and is understood in terms of the fundamental command to "order," which means in the first place wisdom, but also "right and honorable" action. In the anti-Manichean polemic *Contra Faustum*, the eternal law is presented as the will of God that commands the preservation of the natural order, which means that actions are truly just insofar as they conduce to "mortal health."

I argue that these two discussions of eternal law indicate the limitations of any kind of "higher law" doctrine. *On Free Choice* demonstrates the difficulty of breaking free of the guidance of temporal law and its harmonization of the demands of eternal and temporal law depends on an understanding of moral virtue whose independence is rather assumed than proven. *Contra Faustum* shows that the natural ends of self-preservation, procreation,

and civic peace are only the beginning points of moral reasoning, since the pursuit of those ends is governed by further moral criteria that cannot easily be understood in terms of nature. In the end, then, I argue that the doctrine of eternal law, while illuminating a great deal about the problems of politics and morality as Augustine encountered them, points to the crucial importance of the question of human virtue and of acquiring the prudence that provides for this virtue in light of the necessary limitations of political life. It is probably for this reason that Augustine does not return to the doctrine in his later writings and does not rely on it in his reconciliation of the two cities in the *City of God*.

# **The Eternal Law in Augustine’s Early Investigation of Justice**

**by Adam Thomas**

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## **Introduction**

The last century has seen great and increasing interest in the political thought of St. Augustine. Michael Bruno details this revival in his book-length study (2014). There are many reasons for scholars to turn to Augustine. He was the first Christian author to undertake a comprehensive study of Christian politics and the first major thinker to wrestle with the challenge to society posed by Biblical faith. He thought and wrote in the shadow of the Roman Empire at a time when the memory of the martyrs was still strong, and so the problem of Christian citizenship is posed quite directly in his writings: for him, the question was whether the Christian faith was compatible with “the *mores* of a republic” (*Letter* 138.9). He held that Christians could be (and even ought to be) citizens and, and he gave himself the task of convincing Christians and non-Christians alike of this. His doctrine of the “two cities,” earthly and heavenly, stands as the classic exposition of the spheres of theological and political authority. Augustine offers a searching analysis of political and social life and defends the Christian church on political grounds, insisting that it makes a positive contribution to earthly politics and deserves a place within its life.

To these general reasons for interest in Augustine we could add reasons particular to our times. Ongoing controversies regarding the place of Christianity in public life and the relation between Christian belief and the tenets of liberal democracy have made Augustine’s thought more attractive. While he offers an alternative vantage point to modern secularism, his thought is not as alien as that of other pre-modern thinkers because of his clear distinction between the heavenly and earthly cities. The fact that this image of



the two cities and his general counsel of compromise suggest a fundamental problem, rather than a parsimonious solution, appeals to those seeking to negotiate the growing divide between secular culture and Christian faith.

This study contributes to the revival of interest in Augustine by offering an analysis of Augustine's doctrine of eternal law. It is surprising that no adequate study of this doctrine exists, considering that it proved to be quite influential on later thinkers, particularly Aquinas,<sup>1</sup> and that, as Bruno has shown, the excesses of the "realist" and "secularist" interpretations of Augustine have given way to a desire for a more "integral" understanding of his moral and political thought (Bruno 2014, 166-7; 168-9; 171-2; 236-7; 307-9). Recent scholarship has restored the theological context of Augustine's political reflections and the connection between politics and virtue, and therefore seeks to uncover an alternative ground of "social consensus" to secular liberalism that does justice to the breadth of Augustine's vision (ibid., 260-5; 273-4). This development would seem to call for renewed interest in Augustine's doctrine of eternal law, according to which the reason and will of God can be discerned in the order of nature (*Contra Faustum* 22.27). As a standard of morality evidently independent of the truths of revelation, then, the eternal law promises to serve as a bridge between theology and politics and as a possible principle of social consensus.

And yet it is not a complete surprise that Augustine's doctrine has been neglected. While Augustine's works are sprinkled with references to the eternal and natural law,<sup>2</sup>

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<sup>1</sup> Thomas Aquinas cites Book I of *On Free Choice* nineteen times, by my count, in his Questions on law (*Summa Theologica* I-II, Qq. 90-108, esp. 90-97).

<sup>2</sup> Chroust 1973 is the single study that shows the sheer variety of such references in Augustine's works. Augustine does not explicitly relate the eternal and natural law, as Aquinas does (*Summa Theologiae*, I-II,

there are only two extended treatments of the subject. These occur in the first book of *On Free Choice* and the twenty-second book of *Contra Faustum*. While both are included among Augustine's anti-Manichean writings (*Retractationes* 1.9.2, 19-24; 2.7.1, 1), they differ a great deal in form and context—the first is a philosophic dialogue, while the second is a polemical treatise. Both works were written early in Augustine's career,<sup>3</sup> and the fact that Augustine did not draw on his doctrine of eternal law in his *magnum opus* on theology and politics—the *City of God*—has contributed to their neglect. This absence is itself something of a mystery: while Augustine had every reason as a Christian philosopher to adopt a natural law teaching and certainly encountered such a teaching in his reading of Cicero, and while there are many scattered references to the notion in his other writings, the eternal law does not seem to play any part in his reconciliation of the heavenly and earthly cities.

A common explanation for the absence of eternal law in the *City of God* is that that Augustine abandoned the doctrine as part of his “pessimistic” turn in his early period

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Q. 91, aa.1-2), and treats only the eternal law at length. Where he does speak of the natural law, he tends to associate it with the Golden Rule (*Letter* 140.3.15; *Interpretations of the Psalms* 118.25.4). He seems to come closest to Aquinas when he says that human beings “participate” in the eternal law and that the natural law is “as if written in the rational soul” in order that human beings may imitate the arrangements of divine providence (*Contra Faustum*, 22.28, *On Eighty Three Different Questions*, 53.2). However, Augustine does not seem to conceive of natural law only as a moral law: in one place he says that we “love what we are and what concerns us by an unshakeable law of nature” and at another says that man “is carried in some way by the laws of his own nature to enter society and obtain peace with all human beings, as much as is in him” (*On Christian Doctrine*, 1.26.27; *City of God*, 19.12.2).

<sup>3</sup> The first book of *On Free Choice* was written in 388, while *Contra Faustum* was written around 400. While Teske dates *Contra Faustum* between 408 and 410 (2007, 9), most scholars put it earlier. Massie dates it sometime before 404, based on references in *Contra Secundinum Manichaeum* (2011, 9; cf. *retr.* 2.10 and Bogan 1968, 139). In the *Retractationes* Augustine places the work between the *Confessions* and *Two Books Against Felix, the Manichean*, a record of a public argument between Augustine and Felix in Hippo in December 404. This is reflected in the judgment of Mutzenbecher, who dates the composition between 397 and 399 (*CCSL* 35, xviii). This is also the judgment of Bogan, who provides additional internal evidence from Augustine's correspondence and quotations in other works (1968, 135). In any case, the work was completed before Augustine began work on *The City of God*.

(Markus 1988, 87-90; Deane 1963, 90). This is consistent with the general thesis that Augustine's thought underwent a major, "Pauline" development from the time of his conversion until the writing of the *Confessions* in 401 that led him to abandon his earlier philosophic morality (C. Harrison 2000, vi., 6). Another explanation is offered by Ritschl, who denies that Augustine's doctrine, even in its early form, can really provide a norm for ethics (1976, 77). Ritschl's thesis would seem to be proved, if unwittingly, by a recent work that calls for the revival of Augustine's view of natural law, since it does not offer any specific political or moral examples that Augustine's doctrine might illuminate (Covington 2013, 171-178).

However, Augustine himself indicates that the eternal law was crucial for his own intellectual development. At the beginning of *On Free Choice* I, which includes his most sophisticated discussion of the eternal law, he says that in that dialogue he will follow "the very order" of investigation that allowed him to answer the most important question of his early career—the origin of evil—and escape the Manicheans (1.2.11, 10). The eternal law thus proved to be central to what Augustine tells us was the first step of that investigation, which was to define evil or wrongdoing (1.3.14, 1-2; 1.16.115, 13-14). Augustine confirms the importance of the question of evil in the *Confessions* and provides the additional detail that his ignorance of "true, inner justice" had caused him to vilify the Old Testament patriarchs (3.7.12; 3.7.13, 17-22). The argument of *Contra Faustum* as a whole is to vindicate the Old Testament against Manichean criticism: the fact that its longest book is a defense of the patriarchs' justice according to the eternal law confirms the importance of that doctrine for Augustine (*Contra Faustum* 22.27). Even if Augustine did not refer

explicitly to the eternal law in his later statements on politics, it was evidently crucial for his own understanding of justice.

A close engagement with Augustine's two presentations of the eternal law will allow us to offer an alternative explanation for the eternal law's absence in Augustine's final statement on politics. That engagement will show that Augustine's discussions of the eternal law indicate the limitations of any "higher law" doctrine for the guidance of politics. We will discover that Augustine's two discussions of eternal law are properly read as a recapitulation of his earliest investigation of "true, inner justice" (*Confessions* 3.7.13, 17) and are ultimately only preliminary exercises for a true understanding of justice. Augustine says in the *Confessions* that three developments were key to his understanding: first, coming to identify justice with what was fitting, suitable, or proper, and therefore appreciating its diversity and flexibility (3.7.13, 18-20; 3.7.13, 40-42; 3.7.14, 52-7; second, coming to identify this principle of what is fitting with the constant preference for God above all other goods, which includes following the indications of His will in nature (3.8.16, 53-4 [cf. 3.7.14, 56]; 3.8.15, 4, 8); and third, coming to see that this preference for God over merely temporal goods was compatible with acts of distributive or retributive justice (3.9.17, 4-9). *On Free Choice* and *Contra Faustum* shed light on all three of these developments, but explicitly disavow a "long" discussion of distributive or retributive justice (*On Free Choice*, 1.15.111, 64-6; *Contra Faustum*, 22.74 [673:8-9]). As we will see, these disavowals indicate a clear limit not only to the particular arguments in those works, but to the doctrine of eternal law as such.

What then do we learn from these two presentations of eternal law? The immediate purpose of each discussion is to provide an argument that justifies obedience to law: to political law in the case of *On Free Choice* and to God's command in *Contra Faustum*. The presentation in *On Free Choice* is preceded by an examination of the importance of political law to our experience of wrongdoing and of the ends that political law is meant to achieve. The eternal law is introduced as the ultimate standard for political law and the ground of the citizen's obedience to the laws of his community (1.6.48-51). Ultimately, the eternal law (understood as the fundamental command for "order") does not directly influence political law, but provides an independent ground for individual morality that is compatible with obedience to political law that maintains a modicum of "peace and human society" among sinful human beings (1.15.107, 38-40; 1.15.108, 45-8). The presentation of eternal law in *Contra Faustum* is introduced as the means by which we can discern God's will in the order of nature and thereby establish the justice or injustice of some actions without relying on God's explicit testimony (22.27). Augustine draws from this demand to preserve the natural order the secondary precept that all human pleasures ought to be disciplined according to the rule of "mortal health" or safety; from this rule he derives three natural goods of self-preservation, procreation, and civic peace (22.29). He then evaluates the actions of the patriarchs by seeing whether their intentions conform to these goods.

As these summaries suggest, we learn from Augustine's discussion of eternal law how to think more clearly about the foundations of law and the justifications we can give for obedience to law. The examination of political law in *On Free Choice* I shows the

complexity of the task of that law: while it looks first to the security of individuals and their property, its binding character cannot be understood apart from its claim to cultivate a virtuous way of life. However, the consideration of changes in laws or regimes that follows tempers this conclusion by showing the necessity of prudential judgment in justifying any disobedience to political law. The second half of *On Free Choice I* is dedicated to resolving Evodius' crisis of conscience regarding the tension between human justice and the justice of divine providence. In order to resolve Evodius' crisis Augustine presents a general teaching that harmonizes the demands of the eternal and temporal law. That harmonization is effected primarily through a doctrine of moral virtue: by interpreting the eternal law as demanding "right and honorable" conduct, as expressed in the moral virtues of prudence, courage, moderation, and justice, and by interpreting the temporal law as constrained by necessity to seek the low, but genuine good of "peace and human society," Evodius can follow the law with a good conscience (1.12.83, 32-3; 1.13.97; 1.15.108, 47-8). However, as we will see, this account presumes an independence and sufficiency in moral virtue that proves to be illusory when pushed and therefore leaves unresolved the question of the virtue or way of life that was shown to be the ultimate end of the law.

Augustine's argument in *Contra Faustum* provides an alternative way of thinking about the foundations of law. There the eternal law is interpreted in terms of the "natural order," which terminates in the contemplation of "the image of God" and the organization of man's being according to this principle (22.27). While this means that the eternal law demands faith, Augustine says that faith means staying within the bounds set by nature

(22.28). The crucial term in this account is not moral virtue, but “mortal health” or safety (22.29), which Augustine announces as the natural standard and from which he derives the natural ends of self-preservation, procreation, and civic peace. However, while the argument that proceeds is effective against Faustus’ pacifism and asceticism, it is limited by the fact that Augustine imposes limits on the pursuit of these natural ends and shows that health or safety must ultimately be defined according to the health of the soul or a certain order of society. These higher demands are much more difficult to deduce directly from nature, since judgments of what is natural turn out to depend on psychology or political science. In the end, the natural ends of self-preservation, procreation, and civic peace prove to be only the beginning of Augustine’s moral reasoning.

In the end, Augustine presents us with two accounts of the demands of eternal law that can provide general justifications for obedience to particular laws, whether of political authorities or of God. These accounts and ways of thinking serve as useful antidotes to excessive detachment and pacifistic interpretations of Christianity and show us the lines of inquiry with which Augustine began as well as the problems that he saw, but ultimately point to the need to consider other places in Augustine’s works to uncover his final conception of justice.

#### *Previous Studies of On Free Choice and Contra Faustum*

For over a century *On Free Choice* has been read in light of the question of the continuity or discontinuity of Augustine’s thought from his conversion in 386 A.D. to the composition of the *Confessions* in 396 (Séjourné 1951, O’Connell 1968, Madec 1996, 127-

135; C. Harrison 2006, 18; S. Harrison 2006, 17; Van Riel 2007, 257, 279). The last few generations of scholarship has seen a slow but steady emancipation of the dialogue from this debate. The discontinuity thesis, which in its most radical form held that Augustine's conversion of 386 was not yet a conversion to Christianity, but to Neo-Platonism (for references see O'Meara 2001, 125-127 and Kevane 1964, 348-354), contrasted the supposed philosophic hopefulness of the early dialogues with the intensely Pauline character of the *Confessions*. The thesis received its plausibility from Augustine's own admission that his thought did indeed undergo a change in this period under the influence of Paul's epistles. This change of view, referred to by some as the "Pauline revolution" (C. Harrison 2006, vi; 6; 127), served as the interpretive lens through which to view Augustine's earlier writings.

*On Free Choice* proved to be the crucial battleground, not only because of its subject matter, but also because of the seven-year gap between the composition of the first book and the latter books. The discontinuity thesis as applied to *On Free Choice* was most powerfully stated by Peter Brown, who goes so far as to speak of a "lost future" in which Augustine was forced by hard experience to give up his youthful perfectionism and hopes for human freedom and philosophy (2000, 139-150). Brown draws a contrast between the "ease" [*facilitas*] of the will as it appears in Book I and the focus in Book III on the "difficulty" and "ignorance" that constrain it: in this telling, the Augustine of *On Free Choice* I is "more Pelagian than Pelagius" (Brown 2000, 141), meaning more hopeful about righteousness in the absence of grace than even the great enthusiast of the unaided human will, while the Augustine of the latter books is forced to offer what Séjourné and O'Connell



call (borrowing Augustine's term) a "retractation" of Book I (Séjourné 1951, 359n2, 360; O'Connell 1968, 53n17, 1970, 51; cf. Wetzel 1992, 54, 84, 86-88, Babcock 1988, 36, Cipriani 2010, 969; see C. Harrison 2006, 199-202 and S. Harrison 2006, 21 for further references).

The discontinuity thesis has remained vulnerable to the simple objection that Augustine himself gives no indication of such a fundamental change in his *Retractationes* on his works (Holte 1990, 83; Bonner 1986, 213; Fortin 1996, 208; Burns 2012, 24-25). While he does speak there of a change of mind regarding the question of grace, he does not withdraw any of the arguments of his early philosophic works. The thesis has therefore always had its critics (Gilson 1929, 310n1; Bonner 1986, 214; Madec 1990, 12-29, 1996, 127-146; Holte 1990, 82-84; Burnell 1995, 50-51, 60-61; see Kevane 1964, 354-360 for further references), and even Brown was moved to offer a qualification in a later edition (C. Harrison 2006, 16-17). It has since been decisively put to rest by Carol Harrison, whose thorough and patient study compiles the evidence to prove that the views attributed only to the mature Augustine were already present in the young Augustine as well (2006, 7; 154-156; 236-237; 239-240). She takes the case of *On Free Choice* to be a "microcosm" of her overall argument, and argues that the work in fact constitutes a consistent theodicy (2006, 203-204; 210-211; 222-224; cf. Smith 2015, 113). In the same year Simon Harrison offered the first book-length study of the work, taking it seriously as a coherent theological and philosophical text (2006). He is considerably more dismissive of those who have "dissected" *On Free Choice* by reading it "with a scalpel in one hand" (17; 24; 26). He

finds the dialogue's unity in its "pedagogical" form, by which terms are introduced, then slowly elaborated, thereby offering a unique "way into the will" (28; 151-152).

These last two studies in particular have benefitted all readers of *On Free Choice* by freeing the text from arcane debates about development and periodization. However, they do not yet venture on the next interpretive step of taking into account its formal character as a dialogue, and thereby harvesting the results of distinguishing between the views of the author and his interlocutor, Evodius. This step has been taken only in the recent work of Daniel Burns (2012, 28-44, esp. 42-44; 2015, 279); it is perhaps no coincidence that he has also been the first to draw a robust moral and political teaching from Book I, which he argues can help us settle the question of Augustine's apparently contradictory indications about the relationship between morality and politics (Burns 2012, 6-27; 276-285; 2015, 273-279).<sup>4</sup>

Burns is of course not the first to approach *On Free Choice* from a moral and political point of view. Many have read *On Free Choice* I in order to ascertain Augustine's view of law. Thomas Aquinas, for example, cites Book I extensively in the Questions on Law in the *Summa Theologiae* (I-II, Qq. 90-108, esp. 91-97). However, recent scholarship on the doctrine of eternal and temporal law in *On Free Choice* fails to deal with the puzzle created by the distance between the dialogue's lofty doctrine of eternal law and its mundane teaching on temporal law, where it is mentioned at all (Torchia 1990, 16). The standard work by Anton-Hermann Chroust (1944, 1950, 1973), while bringing together by far the most encyclopedic list of references to law in Augustine's works, remains on the

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<sup>4</sup> Cf. C. Harrison 2006, 211, where Book I is treated as "a very preliminary, provisional exercise" in preparation for the metaphysical and theological problems of Books II and III.

metaphysical or theological level, and merely presents the two poles of the discussion in Book I without giving an account of the reasoning that might connect them (cf. 1944, 200 with 202; 1973, 75-76).<sup>5</sup> Likewise, Brett Smith (2015) focuses (correctly) on the centrality of “order” in the work as a whole, both as a normative ethical standard and as an all-encompassing principle of the created universe (113, 117-118, 123, 127, 132); but when he comes to the “political and individual dimensions” of order, he quickly introduces a “second level” or “societal” level of order without much explanation (123-124). The more political treatments of the dialogue resolve the tension by moving Augustine’s thought in opposite historical directions: on the one hand, Sergio Cotta resolves the tension by assimilating Augustine’s thought to modern conceptions of law and the state, whether as amoral and neutral or as concerned above all with preserving “the domain of liberty” (1961, 165, 168-172, esp. 169n9; but see 167n7); Ernest Fortin, on the other hand, resolves it by interpreting the argument as a sort of ironic “fiction” in the manner of Plato’s *Republic* (Fortin 1996, 208). Burns has shown how Augustine distances himself from the trans-political doctrines to which Evodius is attracted; he is thereby able to show how Augustine outlines a critique of human law that is consistently radical in theory and conservative in practice (2012, 275-276). Our consideration of *On Free Choice* presses for greater clarity regarding Augustine’s own understanding of the ultimate criterion of virtue and law (Burns 2012, 199) and compares this explicitly non-theological presentation of the eternal law

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<sup>5</sup> To see this tension in Chroust’s work, compare his remarks on the notion of eternal law as the expression of the universal order that just laws “realize and actualize” (1944, 197, 198-9; 1950, 300, 306-7, 311; 1973, 61-62, 66, 71-72, 72-73) and the “frank realism” of Augustine that reduces the scope of human law to peace and order, asking only that it “not defy the express commands of God” (1944, 202; 1950, 308-9, 313; 1973, 74-75).

with the theological presentation of it outlined in *Contra Faustum* in order to arrive at Augustine's view of the eternal law as a whole.

There have been no comprehensive treatments of Book 22 of *Contra Faustum*, although one can find scattered references to it in many treatments of Augustine's moral, political, or legal thought, especially regarding just war (Mattox 2006, 44; Wynn 2013, 213-248; Lenihan 1988, 44-46; Markus 1983). The only book-length study of *Contra Faustum* is concerned with its guiding question—the status of the Jewish people and the Old Testament—and with Augustine's prophetic and figurative interpretations of the events of the Old Testament, rather than Augustine's specific arguments in defense of the patriarchs' righteousness (Massie 2011). This is also true of the most extended treatment of *Contra Faustum* in English, in Paula Fredricksen's *Augustine and the Jews* (Fredricksen 2008, 214-289).



## **Chapter One**

### **The Investigation of Justice in Augustine's *Confessions***

It is appropriate to begin our investigation of Augustine's doctrine of eternal law with the summary of "true, inner justice" that Augustine offers in the *Confessions* (3.7.13, 17).<sup>1</sup> As we have said, Augustine's first and most sophisticated discussion of the eternal law in *On Free Choice* is explicitly presented as the reasoning underlying his understanding of this justice. It is also true that the second, theological discussion of eternal law in *Contra Faustum* is best understood in light of Augustine's own concerns regarding God's justice. It will be helpful to examine what Augustine tells us about his investigation of justice early in his career, seeing how the question presented itself to him and what paths he took to discover an answer. The *Confessions* gives only a summary of what must have been Augustine's mature understanding, but as a summary it forcefully conveys the whole scope of the question of justice as Augustine confronted it (including the context in which he first raised the question) and the familiar answers that he later gave to it.

I have structured this chapter as a commentary on Augustine's text in my attempt to bring his teaching to light, organized by section and subsection as seemed to fit the argument's movement. Following a general discussion that situates this discussion in the context of the *Confessions*, the chapter is divided into three main parts corresponding to the main divisions in the passage. The first part (3.7.13-14) begins with the definition of

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<sup>1</sup> I have used the text of the *Corpus Christianorum Series Latina*, XXVII (Brepols, 1981), relying on the traditional section and paragraph divisions reproduced there for citations. When speaking of the *Confessions*, I will always cite the book, section and paragraph number (separated by periods), followed by the line number(s) from the CCSL edition. All translations from Latin are my own.

justice, but is dominated by a series of perplexing analogies that nonetheless shed light on the character of justice. These analogies broaden our sense of what justice is by appealing to certain experiences accessible to everyone and by identifying the just with what is “fitting” in a given situation. Augustine emphasizes the versatility of our notions of what is fitting, suitable, or proper and therefore the diversity of laws and morals that is compatible with, and even demanded by, justice. The second part (3.8.15-16) marks a new beginning, as Augustine begins with a statement of what is just always and everywhere and considers justice as a series of deductions or conclusions drawn from this fundamental law. His series of deductions or conclusions, which proceed by way of concepts like nature, society or fellowship, lust, the soul, order and corruption, ends with a vivid portrait of the absolute centrality of God to a true understanding of justice and morality. Part III (3.9.17), which comes as something of a surprise, begins with a warning about possible errors in judgment that indicates the need for an investigation of specifically political justice. Augustine’s perplexing and concise statements ultimately point to the discussion in *On Free Choice*, where the topics that Augustine mentions are taken up at greater length.

#### *The Place of the Investigation of Justice in the Confessions*

Augustine’s discussion of “true, inner justice” occurs in the third book of the *Confessions*, where he recalls the time he spent in Carthage from the age of seventeen to nineteen. The most important episode in this book is his experience with the *Hortensius*, the book “of a certain Cicero” that he says “changed my disposition [*affectum*]” and filled him with a great desire (lit., concupiscence) “that not this or that sect, but wisdom itself,

whatever it was, I might love and seek and pursue and hold and strongly embrace” (3.4.7, 3-4, 6-7; 3.4.8, 28-31).<sup>2</sup> This moment, at which Augustine goes so far as to say that he “had begun to rise, in order that I might return to You”<sup>3</sup>, is a crucial point in the narrative of the *Confessions*. It interrupts the account of his youthful dissolution, begun in Books I and II, intensified in the experience of love and the theater that opens Book III, and resumed at the beginning of Book IV, and marks the beginning of Augustine’s intellectual and spiritual struggle against that dissolution. But this struggle would not cease for thirteen more years: at nineteen, his resolution to pursue wisdom is quickly eclipsed by his association with the Manichean sect, which he began soon after this crucial moment and which continued for nine years. It is in the course of explaining his initial association with them that Augustine makes his remarks on “true, inner justice.”

It is surprising that Augustine’s desire for “wisdom itself,” as opposed to the dogmas of any particular sect (3.4.8, 28-31; 18-21) is so quickly followed by his attachment to a heretical philosophic sect. Augustine gives two accounts of his turn to the Manicheans. In the first account, which immediately follows his discussion of the *Hortensius*, he presents it as the result of certain disappointments he experienced with Cicero and the Bible. Despite his great love of Cicero, he says that he retained one objection to his *Hortensius* that prevented him from being wholly seized by his philosophy, which was

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<sup>2</sup> It is clear that Augustine considered the pursuit of wisdom as something requiring a reorientation of his entire life. In an earlier account of his experience with the *Hortensius* he says that “I was inflamed by so great a love of philosophy that I immediately planned to transform myself for it” (*De Beata Vita*, I.4).

<sup>3</sup> “Suddenly every vain hope became worthless to me and I greatly desired the immortality of wisdom with an incredible burning of the heart; and I had begun to rise, that I might return to You” (3.4.7, 8-10). The CCSL points out (*ad loc.*) that Augustine alludes to the story of the prodigal son in this use of the verb “to rise” (*surgere*: Luke 15:18-20, Vulgate).



“that the name of Christ was not there” (III.iv.8, 32-33).<sup>4</sup> However, when he turned next to the Holy Scriptures, in order to see “what sort of thing they were,” he found them impenetrable<sup>5</sup> and unworthy when compared with what he calls “Ciceronian dignity” (III.v.9, 1-7). “And so,” as he puts it, he “fell in with people proudly raving,” who not only used the names of Christ and the Holy Spirit, but insisted that they taught the “truth” about God and “the elements of this world” (3.6.10, 1-4; 6-9).<sup>6</sup>

A few paragraphs later, Augustine provides another account of this turning from the Bible to the Manicheans after describing some of their false doctrines, such as their deification of the sun and moon (3.6.10, 14-16), and deploring his former belief in them.<sup>7</sup> Here he leaves off his narrative in order to give a more detailed account of the specific theological difficulties that “sharply moved” him at that time and made him vulnerable to the Manicheans’ deceptive arguments (3.7.12, 1-2). He lists three such problems: first, the origin of evil; second, whether God was bound by a bodily form; and third, whether people in the Bible who had many wives, killed other people, and sacrificed animals had to be

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<sup>4</sup> Augustine had introduced Cicero as someone “whose tongue nearly all wonder at, (but) not so his heart” (3.4.7, 4-5).

<sup>5</sup> Speaking of the Scriptures, he says that he discovered something “not discovered by the arrogant, nor laid bare to children, but lowly of access, lofty as one advances, and veiled in mysteries...My swelling fled its modesty (*modus*), and my sharpness did not penetrate its depths (*interiora*)” (3.5.9, 2-5; 7-8).

<sup>6</sup> In an earlier work against the Manicheans Augustine gives us a little more information concerning the steps between his failure with the Bible and his attachment to Manichaeism, which promised a kind of “enlightened Christianity” that involved no obedience to authority or demands of faith: “You know, Honoratus, that we fell in with such people for no other reason than their saying that, once separated from fearsome authority, they would introduce those who wanted to listen to them to God and free them from all error. For what else compelled me to follow those people for nearly nine years, having spurned the religion that was implanted in me as a young boy by my parents, except their saying that we were frightened by superstition and that faith was commanded to us before reason” (*De Utilitate Credendi*, I.2)?

<sup>7</sup> While Augustine does lament that he ever believed their doctrines (III.vi.11, 52), he also says that he was not feeding eagerly on them (III.vi.10, 22-23). In another account of this period Augustine says that he “did not assent (to the teaching about the sun’s divinity), but I thought that they hid some great thing under these coverings that they would sometime lay open” (*De Beata Vita*, I.4).

considered just (3.7.12, 3-6). Augustine says that these questions “perturbed” him while he was yet “ignorant of the matter” and knew “nothing else, that truly *is*” that he could oppose to the Manichean answers to these difficulties (3.7.12, 6; 1 [my emphasis]).

Luckily for us, Augustine adds a summary of the mature answers that eventually resolved these difficulties for him. He attributes his difficulties concerning the origin of evil and God’s form to his ignorance of two theoretical or metaphysical doctrines: first, “that evil is nothing but the privation of good;” and second, “that God is spirit” (3.7.12, 7-16). The doctrines “that evil is only a privation of good” and “that God is spirit” and are of course quite well known from the *Confessions*, and Augustine’s brief statement of them here is only the beginning of a treatment that ends in the decisive remarks of Book VII (7.1.1-7.2.3 and 7.3.4-7.16.22, respectively). As for the justice of people in the Old Testament, he traces his difficulties to his ignorance of something he calls “true, inner justice” (3.7.13, 1).<sup>8</sup> It is interesting that it is only this third solution that Augustine elaborates at any length.<sup>9</sup> It is also his only elaboration of this third solution in the entire *Confessions*.<sup>10</sup> Even where Augustine comes closest to revisiting the question raised here, when he recalls how Ambrose first made him think the Catholic faith could be defended and claimed without shame by resolving certain Old Testament “riddles” or “mysteries”

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<sup>8</sup> *Vera iustitia interior*. I have chosen to translate the comparative adjective *interior* by the single term “inner,” although it also may be translated (as seems to be required in previous places in the *Confessions*) as “deeper,” “more intimate,” “innate,” “inward,” “more profound,” or even “hidden” (cf. 1.18.29, 27-29; 1.20.31, 3-7; 3.1.1, 5-6; 3.5.9, 7-9; 3.6.11, 57-58).

<sup>9</sup> The discussion of justice is, by my count, at least twelve times longer than the discussion of the first two doctrines combined.

<sup>10</sup> O’Meara too easily concludes from this that this third problem “was of the least significance and cannot long have occupied his mind” (2010, 69).

(*aenigmata*) through “spiritual” interpretation,<sup>11</sup> he does not mention these moral difficulties at all (5.14.24; 6.3.3-6.4.6; cf. 3.7.12, 4-6). Instead, he mentions only how grateful he was to find out that “spiritual” Catholics did not take man’s being made “in God’s image” to mean that God was bound “by the form of a human body” (and thus confined to a place), even if he remained himself unable to conceive of “spiritual substance” (6.3.4, 37-44; 6.4.5, 11-17).<sup>12</sup> We are therefore left with a unique instance in the *Confessions* of a treatise-like treatment of an important issue that breaks decisively with the style and chronology of Augustine’s autobiography.<sup>13</sup>

To be clear, then, the immediate context for this discussion of justice is Augustine’s moral objections to certain elements of Old Testament religion. Augustine tells us later that the Manicheans dealt with this problem simply by rejecting the Old Testament altogether and even privately casting doubt on elements of the New Testament scriptures (5.11.21, 7-11). Their extreme fastidiousness is evident from the example Augustine uses later in Book III to complete this discussion of Manichaeism, where he mocks them for

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<sup>11</sup> Spiritual interpretation applies to the Biblical text the rule that “the letter kills, but the spirit gives life” (6.4.6, 21-27; see II Cor. 3:4-6).

<sup>12</sup> James O’Donnell and (following him) Todd Breyfogle claim that the solutions to Augustine’s three questions are given in reverse order later in the *Confessions*, with the discussions of Ambrose’s preaching at the end of Book V and beginning of Book VI resolving the difficulty of justice among the patriarchs prior to the resolution of God’s spiritual nature (7.1.1-7.2.3 and 7.3.4-7.16..22) (O’Donnell 2012, II.184-5; Breyfogle 2003, 233, note 43). It seems perfectly reasonable to suppose that Ambrose’s interpretation of the Old Testament helped Augustine to overcome his moral objections, but it is striking that he makes no mention of this fact in those passages.

<sup>13</sup> The description of “true, inner justice” marks a change in pace from Augustine’s narrative style, as his sentences grow longer and more complicated, with more subordinate clauses and technical vocabulary. Quinn suggests the discourses on memory (10.8.12-10.15.36) and time (11.14.17-11.29.39) as similar examples of “analytical excursus.” (2002, 166-7). The treatise on justice therefore stands alone in the narrative sections of the *Confessions* (Books 1-9), and stands alone in the whole of the *Confessions* as a summary of what Augustine would come to know. Augustine clearly denies that he knew these things when he was nineteen, and, if we say that Ambrose provided him the means to settle his opinions on the Old Testament, then he may not have been able to answer his objections for at least ten more years.

being concerned about harvesting figs, lest the fruit be “condemned as if to capital punishment” (3.10.18, 1-14). Augustine surely means to point out the gross absurdity of Manichean morals; but, insofar as Augustine was attracted to them, it also shows something of the sensitivity that Cicero had inspired in Augustine by rousing him to a pure life of wisdom. It is certainly true that someone worried about killing lower creatures would be concerned by the polygamy of the patriarchs, the wars of Moses, and animal sacrifices. As Augustine tells us, he eventually came to see that his judgment of the Old Testament was incorrect, and he attributes his error to his ignorance of “true, inner justice.”

### **Part I (3.7.13-14): The Just and the Fitting**

#### **A. The definition of justice**

Augustine begins with a lengthy definition of justice:

Nor did I know true, inner justice that (1) judges not according to human custom, but according to the most correct law of Almighty God, (2) by which the mores<sup>14</sup> of the regions and times were formed for those regions and times, although it was itself everywhere and always, not one thing in one place and another in other places, (3) according to which Abraham, Isaac, Jacob, Moses and all those praised by the mouth of God were just (3.7.13, 17-22).

There are three parts to this definition. The third, that this is the standard that justifies all those Biblical figures praised by God, and that therefore must have relieved Augustine of his perplexity regarding their justice, is not surprising. The first two components, however, are only superficially simple. The first begins by rejecting human custom as a measure, which is consistent with our sense of the independence or “objectivity” of justice. Yet the

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<sup>14</sup> *mores*. I have chosen to translate this crucial word, which seems to mean variously “character,” “morals,” “customs,” “sensibilities,” or “manners,” by the simple, if antiquated, English cognate “mores.”

fact that Augustine links this independence of justice to its taking its bearings from the law of God presents a complication. What is God's law? Surely it is independent of human judgment, but is it grasped by human reason, and therefore transparently rational, or is it something revealed by God as a matter of belief? In either case justice would be something objective, but these two senses of objectivity are not exactly the same. The second part of the definition is obviously a paradox: since God's law itself<sup>15</sup> is responsible for the differences between regions and ages, true justice is somehow one and the same, everywhere and always, and yet compatible with what Augustine later calls "the diversity of mores" (3.8.15, 10). In other words, while justice is one and immutable, its products are many and changing.

This three-part definition of justice compels us to ask three questions. The first part of Augustine's definition had led us to a complication about the status of God's law, the measure of true justice: what difference is there between his understanding of true justice and those that look explicitly to nature, for example, or something meant to be fully compassed by man's unassisted reason, such as those articulated by Plato, Aristotle, or Cicero? The second part pointed us to the paradox that justice is one rule or measure that is the same in every place, but also perfectly compatible with differences from place to place and age to age: what is the unifying element or core that allows us to speak of justice as one and puts limits on our acceptance of diversity in mores, or preventing this acceptance from overshadowing the denigration of human custom with which the definition of justice had begun (3.7.13, 17-18)? The third part points us once again to the immediate context

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<sup>15</sup> The antecedent of the relative pronoun "by which" may be either "God's law" or "true, deeper justice." I am inclined to "God's law" by Augustine's later description of the "divine law" (3.8.15, 6).

in which Augustine investigated the question of justice: how did this understanding of justice help Augustine think through the particular examples of polygamy, killing, and animal sacrifice that were obstacles to his accepting the Old Testament and the Catholic faith (3.7.12, 4-6)?

## B. Analogies of Justice

Augustine does not give us immediate answers to these questions, but instead launches into a somewhat frustrating series of analogies that indicate what his error (condemning people praised by God in the Bible) was *like*. He gives us some general information about the error in the setup of the analogy: “But for those to be judged wicked by inexperienced people, judging ‘according to human judgment’<sup>16</sup> and measuring the universal mores of the human race by a part of their own, is as if...” (3.7.13, 22-24). The error apparently comes from inexperience, and the two participial clauses modifying “inexperienced” seem to correspond to the first two components of the definition of justice. On the one hand, judging “according to human judgment” may be contrasted with judging according to God’s law, as seems to be the case from the context of the quotation from Paul. On the other hand, confusing some aspect of one’s mores for the universal mores of the human race (and thereby condemning those who act in any way other than one’s own) means failing to see that, while justice itself is immutable, what is just is not the same in

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<sup>16</sup> Here Augustine refers to I Cor. 4:3 (Vulgate). The whole passage through verse 5 is of interest here: “But it is of least concern to me that I am judged by you, or according to human judgment (literally, as above, “by the human day”): but nor do I judge myself. For I am not aware of anything against me, but I am not justified in this: but He Who judges me is the Lord. And therefore do not judge before the time, until the Lord comes, Who will illumine the things hidden in shadows and will make the counsels of hearts manifest: and then there will be praise for each one from God.”

every time and place. Augustine will say more about this “inexperience” when he interprets this series of analogies.

As for the analogies themselves, Augustine presents three absurd images that supposedly represent his earlier, false judgment. To repeat, he says that to call these people wicked

...is as if [1] someone ignorant of armaments—what is suited for each member—should want his head to be covered with a greave and to be shod with a helmet and were muttering that it did not come together properly, or [2] someone should fume that it is not allowed him to set out anything for sale on an afternoon appointed as a public holiday, since it was allowed him in the morning, or [3] should see in one house that something is taken in hand by some slave that the minister of the cups is not allowed to do, or that something is done behind the stables that is prohibited before the table and should be indignant that the same thing is not assigned everywhere and to everyone, although it is one dwelling-place and one family (3.7.13, 24-33).

These analogies are obviously comic and therefore provocative in this context: to compare someone disturbed by certain aspects of Old Testament history to someone unable to dress himself, someone too boorish to enjoy a holiday, or someone incapable of grasping the idea of division of labor seems to be inappropriately dismissive of the difficulty. They are surely meant to be provocative, but Augustine clearly did not think his earlier objections were simply ridiculous. We should therefore look to see what is serious about them.

The absurdity of the images comes from a lack of awareness of some “whole” and the relation among its parts, or some absurd dullness to what is fitting. In the first analogy, there is an obvious, natural whole (the body) with obvious parts (a head and a leg), and a corresponding, intuitive understanding on our part of “what is suited for each member” (a helmet for the head and a leg covering for the leg) that is somehow absent in this man. In

the second analogy there is another natural whole (one day)<sup>17</sup>, even one with clear parts (the morning and the afternoon), but the comedy is not that someone fails to see some obvious, natural whole and its natural parts: it is rather that he is angry about a distinction made among the parts of that whole that is simply the invention of human beings (i.e., that is purely conventional). We could even express his anger by appealing to nature—is there a *natural* difference between morning and afternoon or between Tuesday and Wednesday afternoon that explains the prohibition or toleration of buying and selling during those times? If not, isn't this prohibition arbitrary? There are apparently some obvious relations between wholes and parts that are not “directly from nature,” but are instead mediated by some authoritative human decision. This comic episode shows that their reliance on convention, however, does not necessarily reduce their dignity, since in fact we think it childish or boorish to fail to see their suitability in these situations.

The third analogy is the most complicated. It is obvious that a household forms some kind of natural unit or whole and that different parts of a house have different functions (the dining room and the stable, for instance), which is reflected in certain restrictions (no horses in the dining room) and some kind of division of labor among the members of the house (the person cleaning up after the horses does not prepare dinner). Yet it does not seem that all these relations between the different tasks and the different members of the house are equally spontaneous and intuitive. In the first place, while the children of the house are members by birth, their parents are probably present as a result of a marriage covenant. Augustine also mentions slaves (III.vii.13, 30), some of whom

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<sup>17</sup> There may be another natural whole here as well, if the holiday has some reference to the cycle of seasons in the year.



may have been born there, but others may be a part of the house as the result of some transaction (or conquest). The power of human convention (as opposed to nature) in establishing and maintaining these relationships among the members of a household is a matter of debate, but the fact that two particular people are married, or that one particular person is the master and another his slave, is not simply a matter of nature, if nature is taken to be some kind of spontaneous ordering, as we perceive in the case of the human body or a single day. To be clear, Augustine mentions here only the division of labor itself: the person in his analogy is not concerned that some people may be slaves to others within the house, but that any differentiation exists at all between the tasks and places of the household—which exist in any household, with or without slavery.<sup>18</sup>

Augustine completes the series of analogies by drawing us back to the justice of the Biblical figures and making its lesson explicit:

Thus are these (people) who are indignant when they hear that something was permitted to the just in that age that is not permitted them in this one, and that God commands one thing to those, (but) another to these for reasons of the times (*pro temporalibus causis*), although both serve the same justice, while they see in one human being and in one day and in one abode that one thing is suited to some member, that something was then permitted that is not permitted an hour later, and that a certain thing is permitted or commanded in that corner that in the one joined to it is forbidden and punished (3.7.13, 33-40).

The explicit lesson of the analogies is that those who are indignant at the situation of the Bible, in which something is permitted or commanded in one time and not at another, are like those who would be indignant at the three common, unobjectionable situations he has just described. The key to the argument is that Augustine relates the unobjectionable

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<sup>18</sup> I will say something about the order of these particular examples in the next subsection.

distinctions between the parts of one human body, one day, or one household to the distinctions between the Old and New covenants ruling God's people, or the "household of God" whose history is recorded in the Bible. This identification gives force to his observation that those who object to the Bible accept in another form—even to the point of "commanding" and "punishing" (3.7.13, (39-40)—the principle of diversity (that doing right does not mean doing the same thing) that they reject in the case of the Bible. But is Biblical history really a "whole" analogous to the situations he has described? This would seem to mean that polygamy or animal sacrifice, to take earlier examples<sup>19</sup>, was as obviously essential to the religion and society of the Old Testament as a helmet is to a head, a closed shop to a holiday, or a designated cook to a household, even if those practices are now the equivalent of putting a sock on your head or trying to set up a market during a Memorial Day parade or feeding your horses at the dinner table. It is hard to see how this can be more than a crude outline of Augustine's understanding of the matter.

### C. The barriers to understanding justice

Augustine follows up this series of analogies with a more explicit formulation about justice, along with a sharper explanation of our failure to grasp it, which leads us to accuse certain Biblical figures of injustice.

Surely justice is not various or changeable? But the times over which it presides do not go on equally, since they are times. Human beings, however, whose life upon the earth is short, since they are not strong enough in perception (*sensus*) to weave together the

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<sup>19</sup> Augustine probably has polygamy and animal sacrifice on his mind here: according to Christian teaching, polygamy would certainly be "something allowed to the just in that age that is not allowed to them in this one," while animal sacrifice would be something "God commands to those, (but) another thing (perhaps the celebration of the Eucharist) to these."

causes of prior ages and other peoples which they have not experienced with those that they have, but are able easily to see what fits with which member, which moments, and which parts in one body, one day, or one house, are offended by the former things, (but) submit to the latter (3.7.13, 40-47).<sup>20</sup>

Augustine here repeats a claim we have heard several times—the problem is not with justice, but with those who fail to understand it. But he gives a new formulation of our misunderstanding. On one hand, while justice itself does not change, the conditions under which it rules do, which means that what is just will change depending on those different conditions (*On Free Choice* 1.6.44, 16-20). On the other hand, human beings are unable to weave our history and experience together into a “whole” in the same way that we can with an individual body, day, or household. This limit to our perception leads to a situation of low certainty and high ignorance: while we are certain about what is fitting for the different parts of the body, the day, or the household, we are ignorant of the relations between prior ages and societies and our own, which causes us to be offended at the diversity of mores and characters, either by disdaining all other societies and mores but our own or by doubting the constancy and firmness of justice itself (3.7.15, 23-24; 40-41). We instinctively rebel at any rule of diversity among human societies even as we unthinkingly adhere to some rule of diversity in our own affairs.<sup>21</sup>

While Augustine attributes our lack of understanding regarding justice to our general weakness in perception, the more particular barriers to understanding have become

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<sup>20</sup> Reading *his* rather than *hic* (which would yield something like “are offended by those, but obey here (in the present),” as in most manuscripts. This would mean that human beings are offended by prior ages while being subservient to the prejudices of the present.

<sup>21</sup> Earlier Augustine had said that the inexperienced people were “measuring the universal mores of the human race *from a part of their own*,” which implies that they are overlooking the diversity in their own mores in condemning others, rather than simply condemning them for things totally foreign to their way of life (my emphasis).

apparent in the order of the analogies he has presented. The series of analogies moves from a natural, spontaneous whole with natural divisions (a human body) to a natural whole with natural divisions that is conventionally divided (a holiday), to a “composite” natural and conventional whole with natural and conventional divisions (a household). From the movement in these examples we can see what it would mean to rise not only to a political community, a whole more obviously conventional than a household, with more moving parts whose relations are governed by laws and maintained by institutions, but to a community that stretches across many centuries, as does the “people of God,” which according to the Christian understanding that Augustine came to accept seems to be comprised of entirely different political communities. These indications of the real difficulties Augustine encountered in coming to his mature judgment are a nice complement to the apparently glib conclusion at the end of the previous section.

#### D. The analogy with poetry—the just as the fitting

It is therefore not surprising that Augustine next states that “I was then ignorant of these things” (3.7.14, 48). He adds, however, the surprising remark that this was a matter of not paying attention, since they “were striking his eyes on all sides” (3.7.14, 48-49). What follows is an account of Augustine’s early experience with the art of poetry, which he then relates to his later understanding of justice. This analogy, like the previous ones, is perplexing precisely in its simplicity, but it does shed some additional light on justice as Augustine later understood it. The whole discussion runs as follows:

I was then ignorant of these things and I was not turning towards them, and they were striking me on all sides, and I was not seeing,

and I was composing poetry and I was not allowed to put any foot I liked wherever I liked, but (I was only allowed) to put the same foot in one place in one meter and in another place in another meter, and (then) in some one verse, not in all places. And the art itself, by means of which I was composing, did not lack anything, but possessed all things at the same time. And I did not consider that justice, which the good and holy men were serving, by far more excellently and sublimely possessed all things at the same time that it commanded and was changed in no part, nonetheless assigning and commanding not all things at the same time, but what is proper to the changing times. And I was blindly blaming the pious fathers not only when they were making use of the present times as God was commanding and inspiring (them), but when they were foretelling future things as God was revealing them. (3.7.14, 48-60).

The key to this analogy is that there is a single poetic art that governs an array of types of poetry, each of which is governed by a slightly different set of rules. By calling something an art, we seem to mean that it is a kind of knowledge or competence in a certain area of life, whose notion of correctness determines what is done in that area. In governing these various types, the art sets formal limits to what is possible or admissible in a given situation. Augustine's (and our own) experience of the art of poetry shows that these limits are not always simple, but occupy some middle ground between simple repetition of the same action and unending, unlimited innovation. Augustine says that he saw this necessity in the case of poetry, but failed to see that justice was something similar, or that the people praised in the Bible were adhering to justice in a similar way: in the same way that the single art of poetry holds together many different things while limiting what can be done in a given circumstance, justice contains every action that might be commanded, as

something one and immutable, but it assigns and commands only what is “appropriate” to the changing times.<sup>22</sup>

Again, this discussion tells us nothing about the specific content of justice, but only what sort of thing it is by way of analogy. It therefore only deepens the paradox of the second part of the opening definition. Augustine does however introduce a new and important concept here in speaking of what is “proper” (*propria*). This word, whose meaning spans “particular” and “appropriate,” and therefore the two senses of justice as giving to each his own and as doing in each case what is fitting, is at the center of the second part of Augustine’s definition of justice—that justice is one and the same, but productive of moral diversity. The unity of justice comes from its sovereignty over this notion of fittingness that simultaneously sanctions and limits moral diversity across different societies and ages, in the way that the arts sanction and limit diversity in action in their areas of competence. To sum up this discussion of art (and this first part as a whole): we have considered Augustine’s definition of “true, inner justice,” what it is that we are after in trying to understand it, and what are some of the barriers to our understanding it. This has culminated in the question of what is fitting or *propria*,<sup>23</sup> a principle that we recognize so easily in mundane situations but which grows more mysterious as we ascend to matters of greater importance. This principle is implicitly picked up at the beginning of Part II.

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<sup>22</sup> See Quinn 1988 for references to Augustine’s *On Music* (170-2).

<sup>23</sup> This adjective is used once more at a critical point in the second part of his description of true justice (3.8.16, 53).

## Part II (3.8.15-16): The Just as Deduction of the Moral Law

### *A. Moral deductions*

The second part of Augustine's description of "true, inner justice" begins with an abrupt rhetorical question: "Surely it is not unjust anytime or anywhere to love God with your whole heart, soul, and mind and to love your neighbor as yourself" (3.8.15, 1-3; Matthew 22:37-40, Mark 12: 28-34, Luke 10:25-28; cf. Deuteronomy 6:4)? The adverbs "anytime" and "anywhere" remind us of the previous discussion, where Augustine had insisted on the importance of time and circumstance in determining what is just, a fact that had escaped him in his youth. In the context of his rhetorical question, however, their force is to show that there are some things that are just regardless of circumstances, or (to use the language at the end of the first section) are always proper. The new turn that Augustine takes in this second part is to begin from something that is certainly and universally just and to draw conclusions from it. It is not surprising that he starts from this famous statement from the Gospels, which is followed in one account by Jesus's statement that "on these two commandments hang the whole law and the prophets" (Mt. 22:40): this statement is not only a summary of Christian morality, but also a crucial text for interpretation of the Old Testament, which is the immediate narrative context of this discussion of justice (cf. O'Donnell 2012, II.189-190).

Augustine's first conclusion concerns what is always unjust: "And thus shameful acts (*flagitia*)<sup>24</sup> that are contrary to nature must be hated and punished everywhere and

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<sup>24</sup> For a discussion of this word's meaning, see note 32.

always” (3.8.15, 3-4). His use of the word “nature” here is new,<sup>25</sup> and the only information that Augustine gives us for determining his meaning is the following description of what kind of offenses are contrary to nature: “Such as were those of the Sodomites; (even) if all nations were doing them, they would be held under the same accusation of crime according to the divine law” (3.8.15, 5-6). So these actions contrary to nature are those that render us liable to judgment by the divine law, even in the face of universal human sanction or toleration of them.<sup>26</sup> This invocation of the divine law reminds us of Augustine’s earlier mention of “God’s law” in the first part of the definition of justice (3.7.13, 18), while the addition of “even if all peoples were doing them” repeats and deepens the rejection of human custom as a measure of justice with which that definition began (3.7.13, 17-18): the measure of justice is independent even of unanimous human opinion.

What exactly is this “accusation of crime” that results from disgraces against nature, according to the divine law? Augustine says that the divine law “did not make human beings so that they could use one another in that way [*illo modo*]” (3.8.15, 6-7).<sup>27</sup> If we imagine a courtroom proceeding, the “charge” the divine law would bring in this case is that some rule of conduct (*modus* may also be translated as “measure” or “limit”) has been transgressed, one that somehow originates in creation itself. The evil of such a

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<sup>25</sup> The four references to “nature” in 3.8.15-16 outnumber the combined references in the *Confessions* to this point (only one of which is in a nominative form) (1.8; 1.10; 2.6).

<sup>26</sup> As for the specific example of the Sodomites, Augustine’s only concrete example in this section, see *City of God*, 16.30 and Romans 1:26-27. See also O’Donnell’s notes on this sentence (2012, II.190; cf. Breyfogle’s speculation [2003, 235, note 64], which I cannot confirm).

<sup>27</sup> The antecedent the relative pronoun “which” that introduces this clause is clearly “the divine law”, which seems to confirm the choice of “God’s law” as the antecedent of the relative pronoun “by which” in the definition at 3.7.13, 18). It also confirms the suspicion that what is meant by either formulation is not primarily God’s revealed law (either the Mosaic law or the Christian Gospel), but something the law of providence, or God’s will in ruling the whole universe.



transgression is made more explicit in the conclusion to this line of argument: “obviously the very fellowship [*societas*] that we ought to have with God is broken when the same nature of which He is the author is defiled by the perversity of lust” (3.8.15, 7-9). Here the consideration guiding Augustine’s deduction becomes a bit clearer. The fundamental commandment of justice is to love God, which results in fellowship with Him. This friendship, however, is mediated or governed by certain rules: the connection between God and human beings cannot be maintained by following just any rule of behavior. Augustine sees the origin of these rules in the divine law itself (3.8.15, 6-7, 8-9; cf. 3.7.13, 18-19), but their promulgation seems to be itself mediated by “nature”—a breach of these rules is equivalent to a defilement of nature.

What is “nature” here, exactly? Augustine says that it can be “defiled by the perversity of lust” (3.8.15, 9). That loss of fellowship between God and human beings begins with lust in this account. Although we still lack precise definitions of the major terms, we can put together this chain of events from what he has said: the effect of lust is perversity (lit., an overturning or subversion) that leads to a defilement of our nature that results in the loss of God’s fellowship—something obviously incompatible with the first, universal rule of justice, that God be loved. Nature appears in the first place as a healthy or pure condition that is maintained by obedience to God’s decrees.

Augustine next deduces a second conclusion about what must not be done, this time apparently from the injunction to love your neighbor as yourself. His conclusion is that “those that are shameful acts contrary to the mores of human beings must be avoided for the sake of diversity of mores” (3.8.15, 9-10). This marks what seems to be an abrupt turn

back to the consideration of human opinion, which was just demoted in the previous discussion of disgraces against nature (3.8.15, 5-6), where human nature was set in opposition to human opinion. Yet he says here only that things that offend human mores must be “avoided,” rather than “hated and punished” (3.8.15, 4). The most interesting part of this remark is the statement that these must be avoided “for the sake of the diversity of mores,” which recalls the general force of his argument in the earlier discussion of justice (3.7.13-14). Here, however, he describes the benefit of respecting that diversity in a new way: the diversity of mores should be preserved “so that the covenant (*pactum*) of a city or nation among themselves, having been strengthened by custom or law, may not be broken by the lust of any citizen or foreigner<sup>28</sup>” (3.8.15, 10-12). In the first part Augustine had linked the legitimacy of moral diversity to our experience of variation in our everyday experience and to our sense of appropriateness. He makes no reference to what is fitting, suitable, or appropriate here, but instead speaks in terms of deference to human sensibilities, justifying it as necessary to preserve the “covenant” of a political community, yet another important word that he introduces here. Augustine’s statement that this covenant is sustained “by law and custom,” which seem themselves to be related in the sense of “coercion” and “habit,” points us to something like “constitution,” or the fundamental law (written and unwritten) of a political community.

As for the reason that deference is owed to this covenant or constitution, Augustine supplies some additional support to the testimony of common sense in his three hints regarding the situation of any given covenant: he says that the covenant is “among

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<sup>28</sup> *Peregrinus*, which is often translated as “pilgrim.”

themselves,” belongs to “a city or nation,” and is “strengthened by law or custom” (3.8.15, 11). Saying that a covenant belongs to “a city or nation” and that it is made “among themselves” reminds us that a constitution is a constitution for a particular place. As such, it may be open to criticism, whether by foreign visitors or citizens with experience of other places, that it is defective and not worthy of the special respect given it by the citizens of that city or nation. Augustine has shown us in the first part of his discussion how easy it is for us to misjudge laws and customs, especially those of other places and times.

But why should the covenant of a society be shielded from criticism? Augustine’s description of each covenant as “strengthened by law and custom” reminds us that a constitution is maintained at least in part by habitual obedience to it, which (in decent societies, at least) is the result not only of the punishments of the law, but some positive attachment to the community that settles into habit and custom. The fact, pointed out by Augustine earlier, that our instinct is to prefer our own customs and denigrate those of others (3.7.13, 47) is a vivid example of this habituation. This reliance on law and custom can be interpreted as making the constitution strong or weak. Obedience that is the work of law, custom, and habit, once it is established in the heart, appears to be particularly long-lasting (and we see in some places, like the United States, how strongly a people can be attached to their constitution); but the fact that this obedience itself relies on habit (i.e., on repeated obedience) points us to the circular formula that “obedience comes from obedience,” which means that a disruption in obedience to the constitution may be destabilizing or disastrous.<sup>29</sup>

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<sup>29</sup> Augustine will briefly mention the disastrous results of civil war later in the discussion (3.8.16, 44-46).

Whatever else Augustine may be indicating, his only clear statement of the reason that this deference is owed to the constitution is that “each part not fitting together [*congruens*; cf. 3.7.13, 38] with its whole is base [*turpis*]” (3.8.15, 12-13). This remark clearly recalls his earlier language of suitability, fittingness, and appropriateness (3.7.13, 25; 27; 38; 47), and its obvious implication is that the whole here is the city or nation governed by a given covenant, and we as citizens or foreigners are parts (if only temporarily) of that whole. The statement here means that our place as parts of that whole makes some demands on our behavior—we are base (i.e., dishonorable or ignoble) if we do not act in a way consistent with the activity of that whole, which means not doing things that it considers shameful.<sup>30</sup> The reasoning at bottom of this second conclusion (that human mores are to be respected), at least as presented here, is therefore similar to the reasoning behind the first conclusion about shameful deeds against nature: the rule comes from our subordination to some whole—of the individual to some divinely created whole, or of the citizen or traveler to the city or nation in which he lives. The obvious question is how the “whole” that is the city or people governed by a covenant animated by some understanding of what constitutes shameful behavior relates to the “whole” that is governed by divine law.

The relationship is not entirely harmonious, at least if we look at Augustine’s next sentence, which seems immediately to undercut his statement about the baseness of each part not fitting with its whole: “But when God commands anything contrary to the custom

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<sup>30</sup> Augustine does not include any examples of shameful acts contrary to human mores: he may have in mind something like burning the American flag, which is no longer illegal, but is certainly contrary to the sentiment of the great majority of Americans and undermines the reverence most Americans feel toward their country and its Constitution.

or covenant of any people whatsoever, even if it has never been done there before, it must be done, and if omitted, it must be resumed, and if it had not been established, it must be established” (3.8.15, 13-16). God’s commanding again reminds us of Augustine’s use of “God’s law” and the “divine law” earlier and the demotion of human custom in those discussions (3.7.12, 18; 3.8.15, 6). His explanation for this on its face commonsensical statement takes the form of another simple analogy—this time between human kingship and God’s rule:

For if it is permitted for a king in the city that he rules to command something that no one before him, nor he himself had ever commanded, and it is complied with not contrary to the fellowship [*societas*] of his city, but rather is not complied with contrary to (that) fellowship (obviously it is a general covenant of human fellowship to obey its kings), how much more must there be submission to God without doubt, the Ruler of His whole creation, in those things that he has commanded. For just as, regarding the powers of human society, a greater power is put before a lesser for the purpose of obedience, so God is put before all.” (3.8.15, 16-24).

The explanation is superficially quite simple: we should follow God’s commands regardless of human mores because whatever is owed to a human king, which includes the right to make new laws, is certainly owed to God (and more). The idea is that obedience to the king’s commands defines the “friendship” of his city, so that even wholly new commands are not inconsistent with the rules of society. Augustine then rises from this example of human prerogative to God’s prerogative, implying that our “fellowship” with Him (3.8.15, 7-8) is also defined by obedience to His commands. Yet there seems to be a complication here. Does Augustine really mean to say that is clear that obedience to a king’s commands—even entirely new commands—defines the friendship of the city the king rules in such a way that it is *always* contrary to that friendship to disobey his

commands? It seems more likely that ultimately some broader notion of “fellowship,” as embodied in the constitution, would limit the king’s right to introduce new legislation. It may well be “a *general* covenant of human society to obey its kings” (3.8.15, 19-20; emphasis mine), taking “general” in the sense of sense of “most of the time” or “in most cases,” if that obedience would ever be qualified by any notion of a higher law, whether a constitution, a moral law, or an idea of what constitutes “fellowship” in whose name one might disobey a potential command.

The equivalent to this knotty problem on the other side of the analogy is “without doubt”—as in “God must be submitted to without doubt” (3.8.15, 22). Is there any equivalent to the “fellowship” of the king’s city that somehow forms the context for His commands, and therefore sets limits to what can be commanded? This question draws us back again to Augustine’s first use of the word “fellowship,” where he mentioned the “fellowship that ought to exist between us and God,” which is preserved by avoiding actions that defile our created nature (3.8.15, 7-8). Does our nature somehow mediate between us and what God’s commands of us? What either of these “fellowships” is—either among human beings or between human beings and God—has not yet been made completely clear. The only thing that we know for certain is that both of them are somehow maintained by obedience to law.

#### *B. Turn to facinora and the Psychology of Injustice*

Having drawn these conclusions from his initial rule of justice—to repeat, that shameful deeds against nature must be hated and punished, that scandals according to

human mores are to be avoided unless God commands something contrary to them—Augustine now turns to a discussion of crimes (*facinora*). Augustine elsewhere refers to these as the second class of sins, fundamentally derivative of shameful acts but distinguished from them by always involving harm of others.<sup>31</sup> Here he does not address the reasons that crime is bad, as he had done when discussing disgraces in the previous section. He limits himself to giving an account of the elements of crime, or the different movements and passions of the soul that lead us to transgress God’s law. Here the crucial word “lust,” which was essential to his discussion of both conclusions in the previous section (3.8.15, 9; 12), takes center stage.

The whole passage runs as follows:

The same thing is true in the case of crimes, where there is the lust to harm, whether through harsh language or injury, and each of these either for the sake of (1) vengeance, as one enemy to another, or (2) gaining something beyond due measure, as a thief to a wayfarer, or (3) avoiding evil, as to him who is feared, or (4) due to envy, as a more wretched man to a happier one, or someone prosperous in something to him whom he fears to be equal to himself or whom he is pained to see already equal, or (5) due to the pleasure alone of another’s evil, as spectators of gladiators or those who laugh at or mock anyone. These are the heads [i.e., divisions; *capita*] of iniquity, which spring out from the lust for ruling, seeing, or feeling, either from one or two of them or all of them at once, and there is a

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<sup>31</sup> As for the contrast between *flagitia* and *facinora*, in the immediate context Augustine identifies *flagitia* with “corruption” and *facinora* with “harm” (III.viii.16, 36-37). In Book IV he touches on the distinction while discussing the thesis of his first work *On the Beautiful and Fitting*: there he associates *facinora* with “anger” (*ira*), motion, and attack and *flagitia* with “lust,” an “immoderate disposition,” and attachment to bodily pleasures (4.15.24, 17-15.25, 25). The most useful discussion of the two occurs at *On Christian Doctrine* 3.10.16: “I call charity the movement of the spirit to enjoying God for Himself alone and itself and neighbor for God. Desire, however, I call the movement of the spirit to enjoying itself and neighbor and any body not for God’s sake. What untamed desire does to corrupt the spirit and its body is called *flagitium*; what it does to harm another is called *facinus*. And these are the two kinds of all sins—but *flagitia* are first. When they empty out the spirit and bring it into a certain poverty, there is a rush into *facinora*, by which the impediments to *flagitia* may be removed or help sought for them” (cf. Augustine’s *Exposition of certain propositions of the letter to the Romans*, 6.6; I am indebted to O’Donnell’s commentary *ad loc.* for these references).

living badly against the three and seven, the ten-stringed lyre, Your Decalogue, Highest and Sweetest God (3.8.16, 25-35).

“Lust” is prominent at the beginning and end of this description. Augustine begins here by identifying the category “crimes” with the presence of lust to harm another. This lust to harm is not an end in itself, but arises for the sake of satisfying one of five different objects or passions that Augustine calls the “heads of iniquity,” which lead us to violations of the Ten Commandments. These in turn spring up from some combination of another, more fundamental kind of lust, this time “for ruling, seeing, or feeling.”<sup>32</sup>

We can reorder the parts of Augustine’s description in this order: first, some “primal” lust for ruling, seeing, or feeling (or some combination of these) generates five objects or passions in order to satisfy that lust (vengeance, greed, avoiding evil, envy, and pleasure in another’s evil); these objects or passions in turn give rise to lust to harm others in order to attain or satisfy them, which results in transgressions against the Ten Commandments. The mention of the Decalogue is the clearest link with the last section, which ended with a discussion of God’s commands that must always be obeyed. The primacy of lust in this account, however, points us inward to some prior corruption that is manifested in criminal actions, especially against the Decalogue. This turn inward is the closest link to the next section, where Augustine explicitly raises the question of what manner of corruption is engendered by outrages and crime.

### *C. A digression on the effects of sin—grounding the moral law in the soul*

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<sup>32</sup> Augustine alludes to I John 2:16: “Since all that is in the world is concupiscence of the flesh, concupiscence of the eyes, and haughtiness of life, which is not from the Father, but from the world” (Vulgate). His examination of conscience in Book X (10.30.41ff.) is organized around this same division.



At this point Augustine breaks off the description of scandals and crimes in order to raise a sudden question about God's concern for these matters: "But what are scandals to You, Who are not corrupted? Or what are crimes against You, who cannot be harmed?" (3.8.16, 36-37). Stated another way, if corruption and harm are their products and God is impervious to both, what difference do our scandals or crimes make to Him? The force of these questions is indicated by Augustine's own response: "But you punish what human beings perpetrate (or accomplish) in themselves" (3.8.16, 37-38). The mention of God's punishment of course reminds us that God's concern with sin extends to punishment of sin. But if He is not Himself affected by sin (which seems to mean that He cannot seek restitution or redress for injury), what is the principle of His punishment for sin? That question is, I think, answered here by the formula "you punish what human beings perpetrate in themselves," to which Augustine adds this explanation: "Since even when they sin against You, they act impiously in their souls and 'iniquity lies to itself'" (3.8.16, 38-39; Psalm 26:12). Augustine here rejects the notion that punishment for sin is something entirely external to the sin itself. In this view, when we transgress God's law, we deserve to suffer something bad to "make up" for our sin (which would seem to mean that sin would not be bad for us in the absence of God's punishment). Augustine's short statement here indicates something like the notion that sin is its own punishment, or at least that whatever punishment God imposes for sin is preceded by some real corruption in the soul.

Augustine's elaborates on this statement in his following description of the bad effects of sin on our souls, which takes the form of a gloss on the phrase from Psalm 26:12 that "iniquity lies to itself":

...they act impiously in their souls and 'iniquity lies to itself,' whether by (1) corrupting and perverting their nature, which You have made and ordered, or by (2) using immoderately the things allowed them or by (3) burning for things not allowed them into that use that is contrary to nature; (1) either they are held by the affair, raging in mind and speech against You and 'kicking against the goad' (Acts 9:5; 26:14; cf. 22:6); or (2) they are glad when the limits of human society have been burst and are bold in private unions and estrangements, in proportion as anything has delighted or offended them (3.8.16, 38-46).

The grammar of this passage is difficult to parse. Augustine's Psalm quotation seems to be the best place to begin. He had cited this verse in the *proemium* to the *Confessions*, saying that he "does not want to deceive" himself in his recollections "lest my iniquity lie to itself" (1.5.6, 19-20). This suggests that we can read the passage in terms of the sort of self-deception involved in each case. In the first example, the effect of sin is some degradation of our nature as it has been ordered by God—the result of which may be that our desires and habits change and we no longer desire the right things or find pleasure in them (*Nicomachean Ethics* 1113a30-1113b2 and 1176a17-19). We think we want or need things that we in fact should not or do not. There are two ways that this change of taste occurs—by doing things that are simply wrong and doing to an excessive degree things that are allowed. The result of this is to change the composition of our "nature,"<sup>33</sup> which we know destroys our fellowship with God (3.8.15, 8-9).

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<sup>33</sup> I have not seen the reason that Augustine switches between "nature" and "soul" here.

The second example is complicated by the fact that Augustine uses another quotation from the Bible—“kicking against the goad.” The quotation is from Paul’s recounting of his conversion on the road to Damascus, where Jesus appeared to him, saying “I am Jesus, whom you are persecuting. It is hard for you to kick against the goad.” A “goad” (*stimulus*; Gr. *kentron*) is a sharp instrument used for driving cattle or slaves, and may be used metaphorically for something that is a “spur” or “incitement,” or even “incentive” (Lewis and Short, *ad loc.*). The phrase “kicking against the goad” had a proverbial meaning in Greek and Latin of offering fruitless resistance to a greater power, as might an unbroken animal or unruly slave (*ibid*; as at Terence, *Phormio*, I.2.27-28).<sup>34</sup> In the context of Paul’s conversion, Jesus implies that he himself has been such a goad for Paul, who, having been tormented or “pricked,” has been persecuting him rather than obeying and serving him, just as an untamed horse or oxen might kick at someone prodding it before it learns to obey his commands.<sup>35</sup> The deception in this case seems to be not learning the lesson from a painful situation—being so “held” by it that you get angry with others (and in this case, God), rather than learn the true lesson of the situation, which is that conversion and obedience to God is the way out of the pain and suffering caused by what Augustine will later call the “chains that we have made for ourselves” (3.8.16, 51).

The last example of the bad effects of sin on our souls is not as complicated as the second. Here Augustine picks up again on our resistance to restraint, a resistance that can make us glad when we see the social order begin to break down, since we can finally do

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<sup>34</sup> See Otto (1890) “stimulus” (331-2).

<sup>35</sup> Augustine’s use of “raging” (*saevientes*), whose primary meaning is to cry like an enraged beast (Lewis and Short, *ad loc.*) also encourages us to think along these lines.

what we really desire. The deception here is the thought that being free from human laws will allow us to do what is genuinely good for us. Such a thought seems to involve some deception regarding the steadiness of the human character, or a failure to see the great passions and turpitude to which we are subject, which are hidden from our sight most of the time by the power of human laws in restraining us.

What is the lesson of these examples? That “the punishment for sin is sin” is a theme that is repeated many times in the *Confessions* and can be taken to be one of the fundamental theses of the book. For instance, in Book I Augustine says that God was justly allowing him to be punished by his teachers “because You have commanded and it is so, that each disordered spirit (*animus*) is its own punishment” (1.12.19, 14-15). Augustine’s change in tone and style in the remainder of this section suggests the fervent, devotional style familiar to readers of the *Confessions*. In these next few lines Augustine seems to present a summary of many of its famous moral doctrines with “Neoplatonic” overtones. He begins by saying that “these things [the effects of sin just described] happen when You are forsaken, the Fountain of Life, Who are the One and True Creator and Ruler of the universe, and from private arrogance some false “one” is loved in a part of creation” (3.8.16, 46-48). This diagnosis, in which the one and true (*unus et verus*) creator is forsaken for love of some false “one” (*unum falsum*) under the influence of private arrogance, suggests the remedy for that sin: “And so there is a return to You from humble piety, and you cleanse us from evil habit (or custom; cf. 3.7.13, 17-18 and 3.8.15, 11) and are gracious to the sins of those confessing (them), and You hear the groans of prisoners and loosen the bonds that we have made for ourselves” (3.8.16, 48-51). God is exchanged

for whatever has been loved in place of him, and humble piety replaces the private arrogance that caused the initial exchange. This return to God is not simple, however, since our sin, as we have just seen, has the effect of corrupting our souls and giving sin the force of habit, which must somehow be reversed. Augustine describes this change in terms of “cleansing” us and “loosening” our chains, but the warning that follows implies that this cure is far from a sure thing: “...if we should not raise up against You the horn<sup>36</sup> of a false liberty, from greed for having more—at the penalty of losing all—by loving anything of ours (*proprium nostrum*) more than You, the Good of all” (3.8.16, 51-54).

These formulations are quite pointed and involve a number of characteristic paradoxes and antitheses. The “false liberty” that he warns against can be contrasted with his mention of the “chains” that hold the prisoners to sin, whose freedom is in fact hampered by their false sense of liberty. This false liberty evidently stems from “greed for having more,” which reminds us of Augustine’s earlier mention of the “private arrogance” that causes us to prefer anything else to God. His parenthetical remark here that, while this false liberty is pursued out of greed for having more, it comes “at the penalty of losing all,” strengthens the paradox expressed in the phrase “false liberty”: just as this false liberty leads us to slavery to sin, so the greed that propels it in fact leads to extreme poverty. Augustine’s final definition of this false liberty—that it means loving anything that is “our own” more than God—further deepens the paradox, and brings us close to Jesus’ own language in the Gospel that insists on the necessity of self-denial, such as the famous

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<sup>36</sup> *cornua*, which could refer to animal horns (yielding an image of an untamed animal throwing its horns in the air), a trumpet or bugle, or (metaphorically) strength, might, or power (as seems necessary in the Vulgate translation of Psalm 74).

statement that “If any man would come after me, let him deny himself and take up his cross and follow me. For whoever would save his life will lose it, and whoever loses his life for my sake will find it. For what will it profit a man, if he gains the whole world and forfeits his life? Or what shall a man give in return for his life? (Matthew 16:24-26; also recorded at Mark 8:34-37 and Luke 9:23-25)

Augustine’s use of the adjective *proprium*, besides intensifying the meaning of *nostrum*, reminds us of the one previous use of this adjective in the conclusion of Part I. There the adjective was tied to art and the sense of what is fitting or appropriate. The clearest line of argument in Part II is that the love of God (and it alone) always falls under what is *proprium* in the sense that Augustine first used it. It turns out, however, that this love requires us to prevent anything that is ours, or particular to us (or “private,” as at 3.8.16, 47) from impeding that love of God—an effort that Augustine, following Jesus, expresses in language of self-denial. The language of nature, lust, and the health of the soul thus yields to a simpler image of self-denial and absolute reliance on God. Augustine’s exclusive use of this adjective in two crucial sections of argument forces us to think about the relation between the as yet vague notion of “appropriateness” that is the province of true justice and the strict demands of the life of holiness, which categorically subordinates every human concern to God.

As for the ultimate purpose of the apparent digression that ends Part II, it is probably a response to questions about the ultimate grounding of the moral law that Augustine had deduced earlier. That discussion tended to proceed via abstract concepts that were difficult to separate and define. For instance, if we ask what is bad about things “contrary to nature,”

the first answer is that they are things punished by the divine law (3.8.15, 5-6). But if we ask why they are punished by the divine law, the answer is that the divine law did not intend for us to act that way, and that divine fellowship is lost when things are done contrary to nature (3.8.15, 6-9). But this brings us back to the beginning—what is bad about things contrary to nature that merits the loss of God’s fellowship? Augustine’s description of the bad effects of sin is an attempt, I think, to ground the moral law by describing the wretchedness of human beings who forsake God. This is to answer the question he poses in the *proemium* of *Confessions*: “what are You to me? Have mercy on me, that I may speak. What am I to You, that You command that You be loved by me and, if I should not, You are angry with me and threaten great miseries” (1.5.5, 3-5).

### **Part III (3.9.17): Complications in the application of justice**

#### *A. Complicated cases*

After approaching the question of justice from two points of view—first by way of the variability of justice, then by way of its unchanging core—Augustine now should apply his understanding of justice to the particular case of the patriarchs. Before doing that, however, he adds one more complication to his discussion, which he introduces with a powerful disjunctive “but” (3.9.17, 1). He warns us that there are two classes of actions “among shameful acts and crimes and so many iniquities” that we must be careful not to misjudge (3.9.17, 1-9). First there are “the sins of those who are making progress,” which good people will reproach insofar as they fall short of “the rule of perfection,” but praise

“in the hope of fruit” (3.9.17, 2-4). The second class of actions, however, is much more puzzling, since it does not include sins, but things “similar” to sins:

And there are certain things similar to disgrace or crime and are not sins, since they offend neither You nor social partnership (*sociale consortium*) when some things are (1) procured for the use of life that are suited for<sup>37</sup> the time, and it is uncertain whether from a lust for possession; or (2) are punished out of a zeal for correction by an ordained power, and it is uncertain whether from a lust to harm (3.9.17, 4-9).

Augustine’s vagueness is particularly frustrating here—in his use of “certain things” (*quaedam*) and “some things” (*aliqua*) rather than concrete examples and in his two strange parenthetical remarks about the uncertainty of lust. Augustine says that “certain things” are similar to shameful acts or crimes but not sins because they offend neither God nor social partnership, which corresponds to the first rule of justice that began Part II—to love God and love your neighbor as yourself (3.8.15, 1-3). He then divides these actions that are similar to sins into two groups, thereby distinguishing two different ways that these actions satisfy both parts of the first rule of justice. Each group of actions has three characteristics.

The first group is distinguished as actions that “procure” some things “for the service of life” (3.9.17, 6). We can imagine gathering things like growing food, building shelters, making clothing, and buying and selling goods, although Augustine offers us no examples. He only tells us that the things procured are “suited for the time” (*ibid*, 6-7). They are susceptible to “lust for possession” (*ibid*, 7), and therefore must be things that we can call “our own” (3.8.15, 8, 12; 3.8.16, 1, 33, 52). It seems then that these actions have

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<sup>37</sup> Reading *congrua* (an adjective modifying *aliqua*), as in most mss., rather than CCSL’s conjectural *congrue*.



to do with the disposing of property of any sort and are similar to sins because they concern precisely the sort of things that we are tempted to put in place of God. The second subdivision, distinguished as actions that “punish” some things “with zeal for correction” (3.9.17, 7-8) is clearer, especially when we add the second criterion of these actions, that they are punished “by an ordained power” (*ibid*, 8). Our primary experience of punishment is legal punishment, which is distinguished (and justified) by its being carried out by officers “ordained” by the community. The third criterion, that it is “uncertain” whether these actions come “from lust to harm” (*ibid*, 8-9; cf. 3.8.16, 25-32), indicates how these actions are similar to sins: since legitimate acts of correction may involve seizing property or using aggressive (even deadly) force, they may proceed from a desire to harm rather than a desire for justice. Identical actions could proceed from either intention.

Augustine’s contention here is that acts of procurement and correction—that is, the actions of distributive and retributive justice—are similar to sins insofar as they deal with things that are lower than God and therefore at least give the appearance of elevating those goods to a higher place than they deserve, but are not in fact sins, since they do not necessarily grant to them a false status. Augustine thereby draws our attention to the difficulty of ordering all areas of human life “below” God according to a general rule of self-denial. That self-denial is evidently not incompatible with property or punishment, but it is not clear how these matters of distributive and corrective justice ought to be decided. Besides the earlier standard of lust, which seems to mean only a desire that elevates anything in place of God, Augustine gives us two criteria for thinking about this problem: those goods should be arranged in a way that is “fitting for the use of life,” and

punishments for actions that deviate from that arrangement should be carried out by an “ordained power” (3.9.17, 6; 8). Asking about what is fitting of course throws us back into the prior discussion, the first part of which emphasized the variability of this notion, while the second emphasized its rigidity. What then of this notion of “ordained power?” What makes of power ordained? The answer seems to be the law—policemen and judges are legally constituted authorities that carry out their tasks under the law. But their dependence on the law means that their actions are only as good as the laws that authorize them. As for good laws, would seem that they are those that establish and preserve a way of life suited to the times. There is something quite dissatisfying about the end of this discussion. We have been led to see the importance of questions at the heart of political life only to be forced back to categories (what is fitting or suitable) that seem to have been exhausted.

*B. Revisiting the divergence between divine and human judgment*

In light of these ambiguities, it is not surprising that Augustine next emphasizes the divergence between divine and human judgment. He draws this conclusion from what has preceded:

And thus many deeds that seem to human beings like they must be condemned, have been approved by Your testimony, and many (deeds) praised by human beings are condemned with You as a witness, since often the appearance of the deed is one way, and the mind of the one doing it and the crucial moment of the hidden time is something else (3.9.17, 9-12).

This conclusion—that the judgment of men and God often diverges because of the complications arising from the interaction between the deed, the doer, and the time—not only sums up the lesson from the discussion of actions “similar” to sins, but brings us back

to the beginning of Augustine's description of true justice, which he began by recalling his former censure of certain Old Testament figures for injustice and whose initial theme was the immutability and unity of justice as it legislates diverse morals for the many and changing human circumstances (3.7.13, 18-20).

The next sentence, however, presents a much simpler conclusion that pulls back from this complexity and uncertainty:

But when suddenly You command anything uncustomary or unforeseen, even if You have forbidden it sometime, although You hid the cause of Your command for a time, and although it is contrary to the covenant of the society of any human beings, who doubts that it must be done, when the society is just that submits to You (3.9.17, 12-17)?<sup>38</sup>

Augustine's statement that "the society is just that submits to You" is new here. The simplest meaning of the statement is that the ultimate measure of a good society is its obedience to God. It also means, contrary to several indications in Augustine's remarks, that there is no genuine conflict between the good of society and religious obligation, since there is no true good of society independent of God. The good that society aims at, which has not been stated clearly in these discussion, is only available through the worship of God, and therefore we would serve the overall cause of human society even in doing things contrary to its mores or laws, so long as we followed God's commands in doing so. The statement is then a correction to any impression that "God's society" and "human society" are two distinct sources of duties (3.8.15, 6-9; 16-24).

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<sup>38</sup> This is the third time that he has followed up a series of complications with a simpler formulation (cf. the transitions at 3.8.15, 13 and 3.8.16, 46). The second part itself begins with a great simplification of the discussion, as Augustine threw us a lifeline by saying what actions are always just, plain and simple (3.8.15, 1).

## Conclusion

The discussion of justice ends with Augustine's insistence that, even if the "cause" of God's command has been "hidden" for a time, "blessed are those who know" that He has commanded them (3.9.17, 17-18). His remarks to this point have been focused to help us accept this proposition. However, the general character of those remarks and the various lines of argument that Augustine draws upon has left us with a number of questions. The overall question of the relation between the two major lines of argument—the notion of justice as the fitting and the notion of justice as the love of God, even to the denial of self—was not resolved, but rather complicated by Augustine's references to political justice in Part III. While Part II presented a strict deduction of morality from God and nature, Parts I and III emphasized the variability of justice. The best way to conclude our consideration of the *Confessions* is to mention the relationship between this passage and the discussions of eternal law in *On Free Choice* and *Contra Faustum*.

The guiding question of *On Free Choice* is the origin of evil, the first question that Augustine mentions in the *Confessions* as detaining him among the Manicheans. Near the beginning of the dialogue, Augustine makes some autobiographical statements that echo his statements here about the difficulty he experienced with the question. When his interlocutor Evodius asks him "how it is that we do evil," Augustine says:

You move the question that vehemently exercised me as a youth and drove and threw me down fatigued among heretics. From which fall I was so afflicted and overwhelmed by such great piles of empty fables that, unless the love of discovering the truth had gained divine aid for me, I would not have been able to emerge from there and breathe in the very first liberty of seeking (I.4.10, 3-8).

This certainly corresponds with the account Augustine gives in the *Confessions*. In *On Free Choice*, however, he not only advertises his prior difficulties with this question and the “freedom” he now enjoys from those difficulties, but also promises to trace the question for Evodius in the very “order” that he followed in order to escape his doubt. As he says, “and since it was discussed assiduously with me, so that I was freed from this very question, I will discuss with you in that order by following which I escaped” (I.4.11, 9-10).

A superficial comparison of the investigations in *Confessions* and *On Free Choice* shows that this “order” echoes, but is not simply identical to the discussion in the *Confessions*, although there are a couple of explicit parallels. In both cases there is a movement in the text that puts aside a theoretical question to take up a more obviously moral one. In *On Free Choice*, Augustine immediately refines their question from the origin of evil to the definition of evil, or to the question “what is wrongdoing?” (I.6.14, 1-2). The equivalent of this movement in the *Confessions* is the fact that, of the three difficulties that Augustine says made him vulnerable to the Manicheans, only the third, moral question is discussed at great length in Book III, with the others reserved for Book VII. The second explicit point of similarity is in the particular moral examples that govern the respective discussions. When Augustine solicits Evodius in *On Free Choice* for examples of wrongdoing to discuss, Evodius mentions adultery, murder, and sacrilege (I.6.14, 6-8); when Augustine introduces his doubt about the Old Testament in the *Confessions*, he mentions as examples of their injustice polygamy, murder, and animal sacrifice (3.7.12, 4-6).

However, there is one general difference between the two investigations, which is the place of specifically political inquiry in the two works. While Augustine alludes to the difficulties of political justice in the *Confessions*, in *On Free Choice* it becomes clear early on that Evodius' moral opinions are dependent in many ways on the law of his political community (1.3.18, 34-35; 1.4.25, 37-39), which is then made into a subject of investigation.<sup>39</sup> To my lights, this has no counterpart in the *Confessions* discussion, where concepts like "nature," "lust," and the divine law carry most of the weight and political law, where it is discussed, is treated only as something to be compared with the commands of God and obeyed or disobeyed depending on whether it conflicts those commands, rather than something to be taken up on its own terms (3.8.15, 9-12; 22-24; 12-17). The exception, of course, is the brief allusion to distributive and corrective justice that led us to brush up against the question of political laws. Augustine's statement in *On Free Choice* regarding the "order" by which he was freed from the problem of evil, combined with his silence about any such process of investigation in the *Confessions* (pp. 4-5, above), indicates that the dialogue contains Augustine's more fundamental reflections on many of the questions about justice that we have been compelled to raise, and that it is the place to turn to find a more satisfying account of this subject whose importance at the beginning of his intellectual career Augustine singles out in the *Confessions*.

After our consideration of *On Free Choice* we will turn to the twenty-second book of *Contra Faustum*, where Augustine discusses the morality of the patriarchs under the light of the eternal law. This will allow us to revisit the question that Augustine says

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<sup>39</sup> As Daniel Burns has shown in his studies of the dialogue, the only ones I know that have done justice to its political aspects (2012, 2015).

motivated his investigation of justice. He appeals to the eternal law in that argument as the “will and reason of God” that can be discerned in the natural order (22.27). This theological presentation of the eternal law is Augustine’s own, shorn of the difficulties of the dialogue form, and provides a fuller account of the argument that we saw in Part II of this passage in the *Confessions*, where justice and morality were deduced from the commands of God and the order of nature. The question in that work is what we can discern of God’s will and command in the order of nature—that is, using the evidence available to unassisted reason.





## **Chapter 2**

### **Wrestling with the Political Law**

Our consideration of “true, inner justice” as presented by Augustine in the *Confessions* left us with two big questions. The first was what the ultimate ground of true justice is. Several passages indicated that its ultimate ground is the command of God, adhered to in faith. Alongside these passages, however, we found accounts of this true justice that promised to be transparent to human reason—nature, the soul, lust, happiness and misery, and so on—which led us to suspect that the foundation of true justice was ultimately accessible to unaided human reason. The second was how political questions complicated the general thrust of the argument. As we turn to *On Free Choice*, which promises to recapitulate the reasoning behind Augustine’s account in the *Confessions*, we find first an attempt to define wrongdoing as it appears to reason alone, independent of legal authority, which leads to an attempt to uncover the relation between the temporal or political law and the eternal law. The dialogue therefore promises greater clarity regarding these two questions.

This chapter treats the first, “destructive” part of *On Free Choice* I. The conversation in this part allows us to attribute two broad claims to the author. First, that the political law of our community is decisive in even our most simple moral judgments, and therefore must be made a subject of investigation in order to understand wrongdoing. Second, that our experience of political law shows that law to be concerned not only with

the preservation of the external peace of our community, meaning the preservation of life and substance of each citizen, but also with cultivating a certain virtuous way of life.

# 1. The beginning point—faith seeking understanding

The dialogue begins with an emphatically theological question—“is God the author of evil” (1.1.1, 1-2)?<sup>1</sup> Augustine<sup>2</sup> responds to Evodius’ question with the traditional Christian answer to the “problem of evil,” which proceeds as a series of deductions from truths he and Evodius believe about God (1.1.1, 8, 9-10; 1.1.2, 13, 14)<sup>3</sup> and whose final conclusion is that human beings are responsible for their wrongdoing (1.1.3, 20). Evodius at first objects to this last conclusion, but within a few pages admits Augustine has “compelled” him to agree. (1.2.10, 1).<sup>4</sup> But Evodius is not glad to give up his objection, since that merely throws him back on the traditional answer, whose insistence on both God’s sovereignty over creation and human responsibility for sin “torments” him whenever he ponders it (1.2.12, 19-21).

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<sup>1</sup> *malum*. I will translate all forms of this important adjective (and no other) as “evil,” “bad,” or “wrong” as English usage seems to require. I have relied on the Latin text of the *Corpus Christianorum Series Latina*, XXIX (Brepols, 1981) and the traditional subdivisions found there. As with the Confessions, when referring to On Free Choice I will always cite the book, section, and paragraph number (separated by periods) followed by line number(s).

<sup>2</sup> Augustine’s dialogues, like Cicero’s (and in contrast to the Platonic dialogues), force us at least to raise a question regarding the relation between the thought of the author and his statements as a character in his work. For the sake of clarity I will refer to the character in the dialogue simply as “Augustine.” In discussing what I think Augustine meant the reader to conclude from the conversation he presents in the dialogue I will refer to him as “the author.” My rule of thumb in attempting to uncover the author’s thought is not to attribute any thought to him that cannot be conclusively attributed to “Augustine.” This means above all resisting the conflation of his views with those of Evodius. I will note the places where I think this is necessary.

<sup>3</sup> Augustine does, however, imply that it is possible to “know,” rather than “believe,” that God is good (1.1.1, 8).

<sup>4</sup> For a treatment of the argument that compels Evodius, see Burns 2012, 52-59.

Augustine responds to Evodius' difficulty by encouraging him to remain firm in his belief while striving for understanding. He recounts his own past trials with this question of theodicy, familiar to us from the third book of the *Confessions* (1.2.10, 3-8), and in doing so formulates the difficulty in a way that is clear (*plane*) to Evodius (1.2.11, 13-21). Crucially, Augustine also clearly advertises his present "freedom" from the question (1.2.11, 10). He therefore proposes an investigation by which he and Evodius can follow the "very order" of discussion that brought him to his present understanding (1.2.11, 9-10). As for "their"<sup>5</sup> current situation, he says that "we are aware that we are holding fast to the prophet's precept 'unless you believe, you will not understand'" (1.2.11, 12-13). They will "judge best" concerning God even if they do not know the "cause" "why" this should be so, "striving" with God's help for understanding "in this way"—that is, in the way that Augustine himself had (1.2.12, 23-24; 35-36; C. Harrison 2006, 205).

Having proposed a course for their conversation and aroused Evodius' (and our own) expectation for a resolution of this difficult problem, Augustine immediately refines the question under discussion from the origin of evil to its definition—"what is wrongdoing?" (*quid sit male facere*). This preliminary question, which Augustine insists must be discussed first (1.3.14, 1-2)<sup>6</sup>, takes up nearly the whole of Book I, with the original question reintroduced only near the conversation's end, and not by Augustine himself (1.16.117, 29-34). The first series of exchanges on this question, besides offering the first

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<sup>5</sup> Augustine's remark, coming after his testimony that he has been "freed" from the question by the investigation through which he hopes to lead Evodius, makes it clear that he uses the plural "we" here somewhat ironically (1.2.11, 13). This will have implications at certain points later in the dialogue.

<sup>6</sup> As noted in the previous chapter, this movement mirrors the order of discussion in the *Confessions*, where the question of evil's origin is replaced by a discussion of "true, inner justice" (3.7.12ff.)

attempt at an answer, makes clear what sort of “understanding” Augustine seeks of this question. It also makes clear the great barrier to be overcome in striving for this understanding becomes apparent—the reliance of Evodius’ moral opinions on the law of his political community.

## 2. The barrier to understanding—the authority of law

Augustine begins to lead Evodius through this new question by asking him for his opinion, or at least for some examples of wrongdoing (1.3.14, 2-5). Evodius responds by naming adultery, murder, and sacrilege (1.3.14, 6-8). Augustine takes up the first example, asking “why” Evodius thinks adultery is wrong—“or is it because the law forbids it” (1.3.14, 9-10)? By his leading question Augustine introduces an antithesis between a genuine account of “why” something is wrong and an account that relies on or defers to the authority of law. Evodius understands this antithesis quite well: as he says, “it is not bad because it is forbidden by law, but forbidden by law because it is bad” (1.3.15, 11-12). This is consistent with our own instincts. We sense that things like adultery are bad not because they are forbidden by law (which can always be changed), but for some other reason, a reason that causes us to enact laws that forbid those actions. Because law can be changed, it is a derivative moral phenomenon: in arguing about what is right and wrong, we seek to uncover the unchanging reasons that lead to the institution of those laws. Augustine will give powerful expression to this instinct of ours later in this section.

In the immediate context, Augustine further clarifies the understanding they seek in the surprisingly elaborate preface to his next question, which is “for what reason” (*ratio*)

Evodius knows adultery is bad (1.3.14, 21-22). He begins by putting his question in the mouth of another person, who seeks to know “why” he and Evodius think adultery is bad and worthy of condemnation (1.3.15, 14-15). By putting the question in someone else’s mouth, Augustine makes it clear that they are looking for an answer that is acceptable in principle to someone who does not begin with faith, as they do (1.3.15, 19-20). In such a situation, Augustine says, “surely you will not censure people who seek not only belief, but understanding, on the grounds that they are fleeing the law’s authority” (1.3.15, 15-17)? As he says later, such a person requires something that “convinces” or “teaches” that adultery is wrong (1.3.17, 32-33; 1.3.19, 45). It is obvious that one cannot rely on beliefs that others do not accept in order to persuade them, but Augustine does not mean to say that this exercise is meant only to equip them to convince others. In providing such an answer they will have achieved their own goal of “understanding,” through which they will themselves “know and hold most strongly” what they have received in faith (1.3.16, 22; 1.3.16, 19-21).<sup>7</sup>

The immediate sequel shows that it is no simple matter to give a “reason” that meets these criteria. Evodius answers that adultery is wrong in that it violates what we call the Golden Rule. He says that he “knows” adultery is wrong because “I would not want to endure it myself in my wife,” adding that “whoever does to another what he does not want to be done to him, does wrong” (1.3.14, 23-25). Evodius’ answer is perfectly intelligible to us, since this rule is perhaps the most widely cited extra-legal standard of morality the world over (see Matthew 7:12). However, Augustine immediately points out the

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<sup>7</sup> S. Harrison notes the contrast in the speech between *lex*, *auctoritas*, *credere*, and *fidem*, on the one hand, and *intelligere*, *scire ac tenere firmissimum*, and *ratio*, on the other (2006, 87).

possibility that an adulterer might be perfectly willing to endure adultery in his or her spouse, which means that the Golden Rule alone cannot account for Evodius' sense that adultery is wrong.<sup>8</sup> Once this is shown to him, Evodius can only respond that "it seems bad to me because I have often seen people condemned for this crime" (1.3.17, 34-35).

Evodius' forthright admission gives Augustine an opening to make absolutely clear what it means to rely on law and authority in determining what wrongdoing is. He begins with the obvious statement that "surely human beings have been condemned many times for doing what is right" (1.3.18, 36-37). He then appeals to Evodius' Christian faith, telling him to review the Bible, where we read of the apostles and martyrs whose examples prove that "condemnation" cannot be considered the same as "certain judgment of wrongdoing" (1.3.18, 37-42). If it were, as Evodius' admission implies, then it was wrong to believe in Christ and to profess that faith "at that time" (1.3.19, 42-44). While Augustine's pointed reference to the Bible and to the Christian apostles and martyrs seems like a regression in their efforts to go beyond faith in the direction of understanding, he adds the brief, puzzling remark that he could have sent Evodius to "other books" (1.3.18, 37) to learn the same lesson. According to Augustine, the unreliability of law as a standard for wrongdoing is not a uniquely Christian doctrine.<sup>9</sup> While his point seems to be made in unnecessarily dramatic fashion, the conversation that follows demonstrates that rising to a standard of wrongdoing independent of law, the existence of which we all feel so keenly, is no easy matter.

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<sup>8</sup> I will take up the details of this argument in the next section.

<sup>9</sup> A parallel statement occurs in the first discussion of lust, discussed below, where Augustine indicates that deference to legal authority is not a specifically Christian habit (1.4.26, 42, *legibus autem credimus*).

### 3. The Golden Rule—the necessity of turning “inward”

Before moving on to the next section of the dialogue we should consider in detail the only substantive reason Evodius gives for condemning adultery, which is that it violates the Golden Rule. The difficulty with Evodius’ invocation of the Golden Rule is that it is merely a demand for consistency or a prohibition against making exceptions in your own case from the behavior you expect or demand of others. This demand surely captures something of our moral experience: when thinking of whether something is wrong, we consider how we would feel if someone did it to us. This is perhaps the readiest principle for explaining to children why a certain action is wrong. When a child takes a toy from another, for instance, an adult will often ask him “how would you like it if he took your toy from you?” In other works, Augustine insists on this rule’s fundamental and universal character,<sup>10</sup> but his counterexample here shows that the practical application of this rule depends on a prior moral opinion of what you would or would not accept in your own case, which in turn determines how you treat others. In this case, Evodius has a clear idea of what he would and would not accept in his own case, itself based on a certain understanding of what obligations he and his wife have toward each another by virtue of “belonging” to

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<sup>10</sup> In other works Augustine links the Golden Rule with the “written conscience,” “natural law written in the heart,” or simply the “law of nature” or “innermost law,” which no people could change (*Confessions* 1.18.29, 27-29 and 2.4.9, 1-3; *Letter* 157.3.15; *Interpretations of the Psalms* 57.1 and 118.25.4; *de Doctrina Christiana* 3.14.22; see S. Harrison 2006, 87n8 for scholarly treatments of the Golden Rule). He even says that it is a sufficient rule for “all dealing and intercourse with human beings” (*On Order* II.8.25, 24-26). These statements make his setting aside of the rule here even more striking. For Chroust, the Golden Rule is the second principle or “guideline” of natural law for Augustine, along with the precept to give everyone his due (1973, 72; also Deane 1963, 85-87). While Chroust treats these precepts as equal, the argument here, and Book I as a whole, shows that Augustine understands the Golden Rule to be subordinate to the precept of giving to each his due (1.13.90, 12-13; see note 11, below).

the other (1.3.16, 23, *in uxore mea*). However, the example of trading spouses shows that this is not in fact the only possible understanding of marital obligations that can be consistently adhered to—mutual fidelity and “equal license” are equally consistent (1.3.17, 28).<sup>11</sup>

Again, the fact that Evodius sees this alternative of “equal license” in marriage not as an example of integrity, but of even greater baseness than conventional adultery shows that he is not simply applying the Golden Rule in opposing adultery. Instead, he is applying that rule in light of his understanding that spouses owe fidelity to one another, and that a failure to preserve that fidelity is a symptom of “corruption,” even if the spouses themselves consent to it (1.3.17, 27). This sense that adultery “corrupts” is picked up by Augustine in his suggestion in the next section that perhaps “lust” (*libido*) is the evil in adultery, and that Evodius has “suffered difficulties” by looking only “outside” at the “deed itself” (1.3.20, 47-49). The term “lust” turns us inward, to look at the soul of the adulterer, rather than seeing whether his actions derive from a consistent principle “outside” him (1.3.20, 48; S. Harrison 2006, 85n5). Augustine encourages us in this direction by pointing out that we consider someone who desires to commit adultery and is only prevented from doing so by some accident to be as immoral as someone who is caught “in the very act” (1.3.20, 49-53). This sense points to the importance of something “inside”—perhaps a desire, passion, or will—that precedes any act of wrongdoing (Wetzel 1992, 64). Can this

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<sup>11</sup> Augustine gives another example of this kind in his commentary on Jesus’ own statement of the Golden Rule in the Sermon on the Mount (Mt. 7:12). There he uses the example of someone who desires to be “provoked” into excessive drinking and therefore provokes this very thing in someone else. Needless to say, Augustine does not approve this person’s consistency: “it is ridiculous to think that he fulfills this maxim” (*De Sermone Domini in Monte*, 2.22.74, 1700-1704).



corrupt state of soul, which Augustine calls “lust,” be isolated in such a way that we can draw from it a reliable moral standard?

#### 4. Distinguishing lust from desire—the limits imposed by political law

Evodius eagerly takes up Augustine’s suggestion. He is convinced that, having identified lust as the evil in cases of adultery, they have answered the question not only of adultery, but also of murder and sacrilege and indeed “all sins,” since lust clearly “rules in” (i.e., defines) the whole “genus” of wrongdoing (1.3.21, 54-58). Just as he had in the case of the Golden Rule, Augustine immediately tests the adequacy of this new moral standard. He does so by asking whether Evodius “knows” how to distinguish lust from “desire” more generally (*cupiditas*; 1.4.22, 1-2). Augustine thus indicates that lust, as a term of distinction, appears as a species of desire (a “bad” or “blameworthy” desire) that cannot be understood except as distinguished from other desires that are not bad (1.4.24, 21, 24). He asks on what basis Evodius makes such a distinction. He does so by giving an example of someone who kills another “not from a desire to gain anything else, but fearing that something bad may befall him” (1.4.22, 10-12). Is he a murderer? The difficulty of the example is that the desire motivating his action—“to live without fear”—is undoubtedly a desire for a good thing, as Evodius admits (1.4.23, 16-17). But if all sin is defined by “lust” (i.e., bad or blameworthy desire), in what sense can Evodius say that he does something wrong?

Evodius has a very difficult time coming to terms with Augustine’s example. In fact, he is so resistant to its implications that Augustine has to present it to him no less than

five times before he feels its force (1.4.22, 10-12; 1.4.24, 19-26; 1.4.25, 32-36; 1.4.26, 40-44; 1.4.27, 45-1.4.28, 57). His first instinct is simply to deny that someone who killed another out of some fear of harm for himself could actually achieve the security he seeks: such a thing could never come about “through his crime” (1.4.23, 17-18). This answer clearly shows that Evodius thinks this action is wrong, but it proves to be a *non sequitur*: while Evodius wants to stand by his contention that lust alone distinguishes wrongdoing, Augustine points out that they must consider only what this person “himself desires,” rather than his success or failure to gain what he desires (1.4.24, 19-20). In this case it is “certain” that the killer desires something good (a life free from fear), which desire itself must be blameless, unless they intend to blame “all lovers of good things” (1.4.24, 22). Faced with this dilemma, Augustine continues, they can do one of two things: (1) change their rule of wrongdoing, admitting that the presence of lust (i.e., bad desire) is not in fact the defining characteristic of sin; or (2) continue to adhere to their standard of lust, which means changing their judgment of murder in light of that rule, so that “there will be some instance of murder (like the present case, where no bad desire has been assigned) that cannot be a sin” (1.4.24, 22-26).

Faced with the alternatives of abandoning a moral standard in which he has placed such great hopes or abandoning his deep moral convictions about murder, Evodius avoids a direct confrontation with the issue. He does not address the particular example under consideration, instead simply listing examples of people who kill other human beings “without sin” (1.4.25). Before following this deviation in the argument we should be clear about what has transpired so far. Evodius has adopted the position that wrongdoing is

defined by lust, but is under pressure from Augustine to distinguish this lust precisely. Augustine has put forward the example of someone killing from fear as a test case. Evodius is willing to grant that freedom from fear is a “great” good, but resists the conclusion, proposed by Augustine, that someone who kills for this is moved by a good desire and so is blameless. The difficulty seems to be that Evodius’ understanding of good or bad desire is not, as Augustine suggests, simply the same as desire *for* good or bad things. Nor, I think, is this our understanding of the difference between good and bad desire. It does not seem to us that stealing someone’s car or cheating on a test is bad because having a car or receiving an “A” is bad in itself; rather, we say that having a car or the “A” in that particular case (after stealing it or cheating) is bad because stealing or cheating (the only means of securing it) itself is bad. This of course means that our notion of what constitutes a bad desire depends fundamentally on a rule of morality that determines when a desire for good things becomes bad. In Evodius’ case, as we now see, this rule of morality is in the first place the law of his political community.

The examples that Evodius gives of justified killing are soldiers killing enemies, judges or their ministers killing the guilty, and someone accidentally killing a bystander with a weapon.<sup>12</sup> As Burns points out, the most important examples here involve political relationships that are defined and governed by law (either the laws of war or criminal and civil law) (2012, 93; 101). This political aspect of Evodius’ opinion is made explicit by Augustine’s new and provocative formulation of the example of someone killing from a desire for security. He says that “these people” whom Evodius has listed are not usually

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<sup>12</sup> The last example is evidently taken word for word from the Roman law of the Twelve Tables (Ducos 2008, 945).

called murderers, but he wants to know what Evodius thinks about a slave who kills his master “from whom he feared painful tortures.” Must he be counted among those who kill other human beings “in such a way that they do not deserve the name of murderer” (1.4.25, 32-36)? Evodius cannot condemn such an action quickly enough: he insists that there is a “great difference” between this slave and the justified killers, “for those act either according to the laws or not against the laws, but of this one’s crime no law approves” (1.4.25, 37-39). Under pressure from Augustine, Evodius thus reveals that in this case the deeper moral standard that determines his understanding of lust is the law that sanctions slavery and protects masters in Evodius’ community.

Of course, as Augustine immediately points out, this response breaks all the rules of their conversation, which seeks a standard of wrongdoing independent of the law’s authority. Yet Evodius’ frank response brings out an important element of our own moral experience. It is easy for us to miss what Augustine is trying to teach us because Evodius’ answer belies an acceptance of slavery, but further reflection on the kind of offense under discussion will make it clearer. The example of a slave killing his master from fear is a potent one for Evodius because, if the slave’s innocence is granted, it is hard to see how any institution of slavery could be maintained by morally serious people. That institution necessarily depends on the preservation of the masters’ authority, including their authority to do things that cause fear. If these necessary threats or actions were considered to be legitimate cause for rebellion and even killing the master, the whole institution of slavery could no longer be defended. Evodius senses these consequences and resists them, even if that means appealing to legal authority without any thought of lust, his stated rule of

wrongdoing. We would face a dilemma analogous to Evodius' if Augustine's example were translated into something closer to our own situation. For instance, what if someone killed a police officer or prison guard from fear of suffering something painful?<sup>13</sup> *Pace* Hobbes, very few of us think that resistance to these legal authorities is justified, nor would our judgment change if we found out that someone who did such a thing desired or gained something good from it. We accept that freedom from fear or pain is a good thing, but every society distinguishes between the authorized and unauthorized use of force in its laws. These officers, who act "in the name of the law," do things that inspire fear or are painful, but we do not think that justifies violence or resistance against them. We therefore are instinctively inclined, like Evodius, to attribute the motivation for a prison break to lust or a bad desire. The difficulty, of course, is that this means we take our moral bearings from our community's law, the very thing this conversation is attempting to escape.

We are now in a better position to feel the force of Augustine's chastisement of Evodius for "calling him back" to authority when "it has been taken up by us to understand what we believe" (1.4.26, 40-42). "But," he continues, "we believe in the laws" (*legibus autem credimus*). In this latest, pointed statement of their task—to understand what they believe—Augustine makes clear that in this case the "belief" that hinders their understanding and that must be overcome is not solely a matter of Christian doctrine, but a matter of widespread "faith" that the laws of our political community are reliable guides for determining wrongdoing (cf. 1.2.11, 10-11; 1.2.13, 35; 1.3.15, 15-17, 19-20). Insofar

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<sup>13</sup> If we interpret the example in light of Augustine's description of the use of torture in Roman law courts (*City of God* 19.6, 5-6), it is possible to think that the slave kills his master from fear of the ordeal of giving testimony. This would be analogous to killing a police officer or prison guard.

as we, like Evodius and Augustine (1.4.25, 32, *adsentior*), accept the distinction between officers of the law who kill in the line of duty and those who kill the police, or more generally between soldiers, judges, police officers, and careless people, on the one hand, and murderers, on the other, we share this “faith.”

This indication of the centrality of political law to Evodius’ moral opinions leads Augustine to restate his slave example in purely legal terms: does the law that would punish a slave for killing his master, even if he feared great torments from him, punish incorrectly (1.4.26, 43-44)? Evodius says that it “in no way” punishes incorrectly, as long as the slave acted “willingly and knowingly” (1.4.27, 46). This response only confirms his fundamental trust in the law: like a good citizen, his first instinct is to think that the law punishes “correctly” so long as it punishes someone who “truly” broke the law (i.e., someone who did so deliberately and with full awareness of his actions).<sup>14</sup> It is of course indispensable to just legal proceedings to establish a person’s degree of culpability before punishing him for a crime, but focusing on this question leaves entirely aside the justice of prosecuting and punishing someone for that particular action in the first place. Certainly a law punishes incorrectly if it punishes someone without establishing that he in fact transgressed the law. But a law also punishes incorrectly if it punishes someone for something that is illegal, but not truly wrong. And it has not been established that the hypothetical slave has violated that independent standard, at least as it has been interpreted in their conversation to this point. It is only with great reluctance that Evodius faces this deeper question in this case.

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<sup>14</sup> Wetzel erroneously attributes this trust to Augustine as well as Evodius (1992, 65).

Augustine gets Evodius to acknowledge the threat that Evodius' explicit moral standard poses for the law itself only by walking him back through their conversation. First he reminds him of his earlier statement that lust "rules" in every sin and is what makes it evil (1.4.27, 47-48; cf. 1.3.21, 56-58), then of his agreement that the desire to live without fear was not itself a "bad desire" (i.e., a lustful one) (1.4.28, 50-51; cf. 1.4.23, 16-17). If these things are indeed so, Augustine continues, stating his challenge for the fifth time (cf. 1.4.22, 10-12; 1.4.24, 19-26; 1.4.25, 32-36; 1.4.26, 40-44), the master is not killed by the slave through a blameworthy desire. Therefore, the reason his crime is bad has not been discovered (1.4.28, 53-55). In other words, there remains a discontinuity between their judgment that the slave does wrong and their understanding of the rule—that acts proceeding from lust are wrong—that would justify their judgment. Evodius now feels the full weight of Augustine's attack, and even goes so far as to admit that the slave would be condemned wrongly (*iniuria* [literally, "without right"] : 1.4.29, 58). This admission clearly troubles Evodius: he "would not dare" to say such a thing if he had anything else to say (1.4.29, 59).

As in the discussion of adultery, Evodius' attempt to formulate and defend the extra-legal standard of wrongdoing in which he has such confidence ends in failure (cf. 1.3.19, 46). There, his attempt to formulate a "external" standard to which actions must conform—the standard of consistency as expressed in the golden rule—failed because it ultimately relied on something deeper in the conscience of the person applying the rule. In this case, the "internal" standard—a corrupt desire, passion, or will in a person's soul—failed because it ultimately depended on some measure of right and wrong action outside

the person's soul (Burns 2012, 104-106). This measure turned out in a crucial case to be the law of Evodius' political community and the distinctions of orders based on it. This result is not so surprising: our access to a concept like "lust" or a "wicked desire" is not necessarily in the objects of desire *per se* (money, property, freedom, security, sex, e.g.), but in the means that those desires would compel us to use to attain those objects (e.g., adultery, theft, or murder). The question this raises is what standard or rule limits these means, or determines at what point these means necessary to satisfying desires lead us to call those desires themselves "bad" (Cotta 1961, 161). One obvious source, as it has come to sight in these pages, is the law of our political community. In the next section Augustine will intervene in the conversation to begin correcting their understanding of lust. This intervention, discussed in the next section, eventually leads to a consideration of the standards by which we judge political law.

##### 5. A new doctrine of lust—love of goods of fortune

Just as he had the previous time Evodius was reduced to silence (1.3.19, 46), so Augustine intervenes here to make a suggestion that keeps their discussion going. "Is it so," he asks, that the slave was punished wrongly (1.4.29, 60)? He suggests that Evodius' judgment is premature because he has failed to consider "whether that slave desired to be free from fear of his master for the sake of satisfying his own lusts" (1.4.29, 60-62). Augustine seems to be pointing out that in judging actions we may have to look beyond the immediate desire motivating the action to the broader context of that desire or action. In this case, is the slave doing something that seems to be innocent in order to do something



bad later on? An act that taken in isolation seems good will be seen in a different light if it turns out to be part of a scheme to do something wrong. Just as we tend to excuse and even admire Robin Hood's legendary stealing (something we generally regard as bad) on the grounds that he steals only in order to give to the poor, so we may blame people for doing things that would generally be good if these are a means to something bad. For instance, we may come upon two people in a fight in a dark alley. From our initial perspective, we see only that each struggles to preserve his own life. We may assume (perhaps rightly) that each person is thinking only of what he must do to preserve his life, and may conclude that their actions are equal (and equally blameless). But if we knew that one of them was a thief who had attacked the other and the other was an honest person who happened to get lost there, we would no longer see their actions as equal. This is because of the different intentions that lead to those identical actions. The criminal is put in the position by his desire to steal from others and defends himself in part to preserve his freedom to commit future crimes, while the honest person finds himself in such a situation by accident and defends himself in part to be able to continue in his honest pursuits.

It is no surprise, then, that Augustine now remarks on how we distinguish between good and bad people in general, or between good and bad lives, each taken as a whole. "Desiring to live without fear is characteristic not only of good people, but of bad people as well," he says, so that no clear moral distinction can be made on this basis of this desire (1.4.30, 63-64). What does distinguish them is the way they go about acquiring this security. Good people, Augustine says, seek this security "by turning love away from these things that cannot be possessed without the danger of losing them," while bad people

“strive to remove impediments in order to rest with security in the enjoyment of these things, and so lead a criminal and villainous life that is better called death” (1.4.30, 64-69).

In trying to understand Augustine’s meaning we should begin with his phrase “these things that cannot be possessed without the danger of losing them.” These must be things whose possession is never certain: it will therefore be useful to abbreviate by referring to them as “goods of fortune,” since our enjoyment of them is fundamentally out of our hands. It is hard to think of anything we possess that does not fit this description—the possession of our property, our lives, honor and position, and our loved ones are all subject to loss (Wetzel 1992, 46). It seems (although Augustine does not say so) that these goods must be contrasted with virtue, which is fundamentally in our control. Augustine suggests that good people seek their security (that is, a life without fear) by “turning away” their love from these goods of fortune, or in lessening their attachment to them. The definition of security according to these good people appears then to be a certain independence from the kind of things one can fear losing, attained by modifying one’s desires and expectations in light of the uncertainty of human life. As Augustine represents them, bad people do not undergo this modification of their desires, but think only of destroying whatever stands in the way of their enjoyment of these “uncertain things.” Whereas the good see *limitations* to their enjoyment of these things, and therefore modify their desires for them, the bad see only *impediments*, which they strive to overcome in order to satisfy their unmodified desires, thereby committing crimes.<sup>15</sup>

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<sup>15</sup> The fact that all these “uncertain things” come with the danger of loss means that we sometimes have to make exertions to acquire or retain them, insofar as that is possible. These exertions can be injustices (stealing, murder, etc.): according to Augustine’s suggestion here, good people see this and decide that such

The heart of Augustine's comparison of good and bad people is the antithesis between "turning love away" and "striving to remove impediments." We can understand this antithesis better by returning to the simple example of the car mentioned earlier. Both good and bad people sense the enjoyment that a new car can provide. The difficulty each faces is that a particular car is owned by his neighbor. As a result of this, the good person would "turn away" his love from the car, since the only way he could have it would be by stealing it from his neighbor. He would probably remain content with his old car, believing that a new car was not in fact that important to him, since it is just a "thing" and therefore not essential to his happiness. The bad person, in contrast, would perhaps look for ways to steal his neighbor's car, or get together enough money (by whatever means) to buy one for himself. The things he would have to do in order to secure the car would be no objection to him. This seems to be the difference that Augustine is pointing out between the good and the bad: each side desires good things, but good people sense that there are limitations to the pursuit of good things that cause them to see those things in a different light, limitations that bad people ignore, which causes them to commit crimes.<sup>16</sup>

Just as he had done with Augustine's first suggestion—that perhaps lust is the evil in adultery (1.3.21, 54)—Evodius latches onto this second suggestion with great enthusiasm, concluding that they have discovered the true definition of "that blameworthy desire that is called lust" in "the love of those things that someone is able to lose against

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things are for that reason not choiceworthy, while bad people see only the possibility of enjoying the things and ignore the injustice.

<sup>16</sup> This point seems to be similar to the one made by Aristotle in the *Nicomachean Ethics* in his discussion of the things "that concern good and bad fortune," which he calls "things that are generally good," as opposed to things that are "good for someone" (i.e., some particular person) (1129b1-4).

his will” (1.4.31, 70-73). He thereby takes the contempt for or detachment from goods of fortune that Augustine said is characteristic of good people and turns it into a strict moral rule. Again, Evodius’ despondency dissipates—he even suggests that they move on to discuss sacrilege, his third example of wrongdoing (1.3.14, 6). And again, Augustine prolongs the conversation and insists on testing this rule of wrongdoing, lest their consideration of sacrilege be “premature” (1.5.32, 4; cf. 1.3.21, 54-1.4.22, 2).<sup>17</sup> This testing leads to the tensest moments of the dialogue, when Augustine’s questioning brings this strict doctrine of lust adopted by Evodius into conflict with his deep moral and political attachments.

As Burns first observed, Evodius’ new definition of lust does not necessarily follow as a conclusion from Augustine’s observations about good and bad people (2012, 204-205, esp. 205n2; cf. C. Harrison 2006, 205, O’Connell 1970, 55, Cipriani 2010, 965, and Cotta 1961, 161, where the definition is treated as Augustine’s as well). At issue is the precise meaning of “love” in Augustine’s and Evodius’ statements. Augustine had left quite vague the precise manner of this love that good people turn away from the goods of fortune. Evodius interprets him to mean that they turn *all* attachment away from these goods, or that *any* attachment to these goods is bad. The result is that, according to Evodius’ interpretation, good people are utterly indifferent to goods of fortune.<sup>18</sup> By turning the

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<sup>17</sup> They do not return to the question of sacrilege in the dialogue.

<sup>18</sup> Evodius’ formulation is apparently identical to the doctrine of the Stoic Aristo as summarized by Cicero in Book I of *On the Laws*. According to Cicero, Aristo considered all things besides virtue and vice existed in “the greatest equality,” meaning that their presence or absence made “not the least difference whatsoever” (I.38; I.55). Cicero contrasts Aristo’s doctrine not only with that of the Platonic and Aristotelian schools, but even with the doctrine of Zeno, the founder of the Stoic school of philosophy (ibid.). This Stoic echo has undergirded an interpretation of *On Free Choice* I as an “experiment in Stoicism” on Augustine’s part (O’Connell 1970, 68). Wetzel, who considers Augustine himself to be a Stoic in ethics (1992, 50, 54), provides a review of the position and the scholars who hold it at 1992, 68-75, and a list of other Ciceronian

presence of any “love” whatsoever for goods of fortune into the very measure of wrongdoing, Evodius must ignore Augustine’s subtle distinction between the love of the goods of fortune on the part of the bad and the “criminal and villainous life” that is the result of that love (1.4.30, 68-69): Augustine does not insist that life is criminal or villainous *because* it is motivated by love of goods of fortune.<sup>19</sup> Evodius’ interpretation of Augustine’s statement thus simplifies and distorts it.

Moreover, Evodius’ strict definition of lust proves to be untenable in the face of his deepest moral opinions. Augustine begins his questioning of this refined rule of wrongdoing by presenting new examples for him to consider, asking whether an “invading enemy” or “murderous assailant” could be killed without lust. He makes the particular force of these examples clear by adding that such people would be killed “for the sake of life, liberty, or modesty” (1.5.32, 4-7). Life and liberty are obviously “goods of fortune” that can never be perfectly secured, while modesty is something mixed—on the one hand, it is associated with bodily integrity or purity, which can certainly be lost against one’s will; on the other hand, modesty is a virtue (1.5.38, 49), so that we do not think that people who are forced to do or suffer immodest things are themselves immodest or impure. In any case, the difficulty is that these two examples of killing, which seem perfectly

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sources for Stoicism at 1992, 47-48. As we will see, this interpretation is possible only if one fails to distinguish the views of Augustine and Evodius.

<sup>19</sup> The interpretation of Augustine’s formulation “the bad, in order to enjoy these things with security, strive to remove impediments and therefore lead a criminal and villainous life” turns on the meaning of *propterea*, which I have translated as “therefore.” Does it express a strict logical relation (“for this reason” or “for this very reason”), so that the desire itself defines a criminal and villainous life? Or does it express a causal or temporal relation, so that the desire to enjoy these goods is only the cause of their becoming criminal and villainous? In this latter case, the definition of wrongdoing is separate from the strong desire that may motivate the wrongdoing. The progress of the dialogue’s conversation shows that this latter interpretation is the only tenable one.

unobjectionable to us, concern precisely those goods of fortune the attachment to which Evodius has just insisted constitutes wrongdoing (Wetzel 1992, 66; Cotta 1961, 162).

At first Evodius tries to be rigorous in his application of the rule of lust. “How am I to judge those to be free from lust,” he replies, “who raise the sword on behalf of things they are able to lose against their will? Or, if they are not, what need is there to proceed all the way to harming a human being for them” (1.5.32, 8-11)? His rhetorical questions make apparent the radical demands of his understanding of lust. According to this standard, it is hard to see in what circumstances one could use force to defend anything: one defends goods of fortune out of lust and other goods unnecessarily (Cotta 1961, 163). His insistence on complete indifference to the goods of fortune as the rule of morality clearly leads to complete pacifism. Knowing that there is another, stronger moral instinct in Evodius besides this ideal of indifference to the goods of fortune, Augustine presses him hard at this point, which provokes Evodius’ longest speech of the dialogue.

#### 6. Evodius’ long speech—the example of self-defense

Augustine presses Evodius by drawing an unsettling conclusion from his statements regarding two ubiquitous political laws—laws permitting self-defense and commanding military service.<sup>20</sup> Augustine asks whether Evodius, who has just denied that one can kill without lust in defense of life, liberty, or modesty, will deny the justice of laws that give license to citizens to defend themselves from thieves or rapists or command them to resist or kill the community’s enemies (1.5.33, 12-18). The justice of these laws is obvious to us

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<sup>20</sup> While our country no longer uses a draft, our government retains the right to institute a draft should the need arise, and all men are enrolled in the Selective Service at age 18.

(and to Evodius as well, as it turns out), but the difficulty again is that these laws either allow or command actions whose purpose is to defend goods of fortune: in fact, they are only intelligible as a response to the danger of the loss of these goods. Accordingly Augustine asks Evodius whether “we will dare to say that these laws are unjust, or rather not laws at all,” since “an unjust law does not seem to me to be a law” (1.5.33, 17-19).

This last statement of Augustine’s—that an unjust law is not a law—is familiar from Martin Luther King, Jr.’s *Letter from a Birmingham Jail*. Confronted by a series of laws, duly passed by the elected representatives of the people, that denied equal rights to African Americans, King says he had no qualms about breaking these laws since, as he put it, “there are two kinds of laws: there are just laws and unjust laws. I would agree with St. Augustine that ‘An unjust law is no law at all’” (1992, 89-91; cited at Burns 2012, 115). The saying is obviously a paradox, but its meaning is clear: to say that unjust laws are not in fact laws is to say that unjust laws do not carry the weight of moral obligation that gives them a claim to our obedience. As Aquinas puts it in his interpretation of this sentence, a command “has the virtue of law insofar as it has the virtue of justice” (*Summa Theologiae* I-II, 95, a. 2; Cotta 1961, 159). They may be laws in the sense that they are the rules approved, sanctioned and enforced by a political community, but they are not laws in the sense of truly binding moral precepts.<sup>21</sup>

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<sup>21</sup> Cicero nicely preserves these two senses of law in Book I of *On the Laws*: “Law is the highest reason (*summa ratio*) present in nature, which commands those things that must be done and forbids the contrary...the beginning of right must be drawn from law, for it is a power of nature, the mind and reason of the prudent, the rule of right and wrong. But since all our discussion is involved with the people’s way of reasoning, it occasionally will be necessary to speak in the popular manner and to call that a law which in writing hallows what it wants, either by commanding or forbidding, as the vulgar do” (*On the Laws* I, 19). Later in the dialogue Augustine will introduce the eternal law as “that law which is called ‘the highest reason’” (1.6.48, 46).

It is obviously law in this latter sense that Augustine and Evodius seek in this dialogue. But as the experience of King and others has shown, law in this sense, the measure that gives laws in the ordinary sense the binding character that we expect from them, can come into conflict with those ordinary laws and undermine their authority. Having articulated what he thinks is the true standard of right and wrong, Evodius now has to confront the problem in the case of laws permitting self-defense and commanding military service. As we will see, Evodius is convinced of the justice of these laws in spite of his adoption of a “higher law” that calls that into question. The conflict between these two commitments is mirrored in the organization of his speech. In the first half of his long speech, where he justifies those laws, he will disregard the understanding of lust that he has so enthusiastically endorsed and defended, even when he makes explicit reference to lust. In the second half, however, Evodius as it were “remembers” his definition of lust and returns to the kind of moral extremism and pacifism that he showed earlier.<sup>22</sup>

Evodius takes up first the law permitting self-defense. His defense of this law is grounded on the general principle that a law is “fortified” against any “accusation” of injustice if “in the people that it rules” it “gives license to lesser acts of wrongdoing to prevent greater ones” (1.5.34, 20-23). According to him, the relevant criteria for a law’s justice is not simply whether it prevents wrongdoing, but whether it prevents as much wrongdoing as possible. If it is impossible to prevent all wrongdoing, the only reasonable course is to prevent as much of it as possible. And if one must choose between preventing

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<sup>22</sup> We will consider the second half of Evodius speech in Section 10, below.



lesser and greater wrongdoing, one must prevent the greater. These necessities, in Evodius' mind, limit what any law can be asked to accomplish, and therefore must be taken into account in considering the justice of those laws.

This seems in fact to be how we think of laws that allow people to act in self-defense. We think that actions that would never be allowed in the normal course of life, such as harming someone (even to the point of death), must be allowed to people in the face of a threat to their life, property, or bodily integrity in the absence of law enforcement. If the law's agents are not in a position to prevent such crimes, as we hope they normally would, the potential victims must be given license to do what they can to prevent them. This of course is not a perfect solution, since there is no guarantee that private citizens will be able to bring enough force on their own to prevent these crimes, nor is there a way to guarantee that the force a private citizen might bring will always be truly commensurate with the threat. But the only alternative, treating harm done in self-defense the same as any other harm, would encourage these attacks by punishing those who would thwart them, which is clearly unacceptable.<sup>23</sup> Faced with the necessity of choosing between encouraging terrible crimes and putting law enforcement into the hands of private citizens, the law must choose the latter (Burns 2012, 122).

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<sup>23</sup> Even if complete surveillance by the law's agents were possible (which of course would bring grave problems of its own), it would still be necessary to allow citizens the right to respond to attacks (or the threat of attack) before police could arrive. It would also be difficult not to give the benefit of the doubt to those who acted in self-defense even if the facts of the case could be laid completely bare, since such decisions are nearly always made in the heat of the moment.

As Evodius makes clear, in justifying this “license” we insist that the force a person might bring on his or her own behalf is a lesser wrong than the act that provoked it. But why this is so? Evodius gives this reasoning:

For it is much milder for the man who lies in wait for *another's* life to be killed than the one who defends *his own*, and it is much more savage for a human being to endure a violation *unwillingly* than for the man by whom that *force* is inflicted to be killed by the one on whom he tries to inflict it (1.5.34, 23-26; emphasis mine).

Two distinctions separate justified self-defense from the actions that provoke it: the distinctions between what is ours and what is not and between force and agreement. The “law” whose enforcement we put into the hands of those who are attacked is primarily the law of property that gives us a right to things we possess to the exclusion of others. To take the simplest example, someone who ambushes another puts in jeopardy something that is obviously his—his life (cf. 1.15.109, 49 and context)—and so can be rightly resisted. Of course, if the original assailant is killed, then something that is obviously his has been taken away; but we do not consider this an equal wrong because it was provoked by prior show of force. A right to property is a general right to the free use of that property, which means that relations between people and exchanges of property between people must be based on mutual agreement. When force is brought on one side the other may respond in kind to defend his or her right without blame, since the possession of a right includes the right to the means necessary to defend that right.

As we said, this liberty to resist crimes is far from unambiguous. As Burns points out, when Evodius speaks of the attacker as someone “by whom force is inflicted” and the victim as someone “on whom he attempts to inflict force,” he shows that it is not only

actual infliction that is rightly resisted, but attempted (or possible) inflictions of force (2012, 124-125). The law allowing self-defense is meant to preserve a person's security in his or her person and property, which the intention to bring force immediately disturbs. We therefore say that someone ought to be free to respond in these ambiguous situations where something very great might be at stake. Alternatively, some say that we are compelled by nature to respond in these situations, and so cannot be blamed for doing so. But we have to accept that the result of these acts of self-defense may be an even greater loss to the instigator than he had intended for his victim (if someone were killed who had only intended theft, for example). Even more troubling is the case in which someone may be harmed or killed without intending any harm at all. As recent controversial cases of self-defense and arguments about "stand your ground" laws have taught us, this license given by the law includes a considerable license to judge when one is threatened, which, because it can be mistaken in such circumstances, can be a matter of great controversy. But if these acts of self-defense are the only way to prevent certain terrible injustices (if they can be prevented at all), granting the benefit of the doubt to the obviously fallible judgment of private citizens seems to be a necessity the law must accept in its attempt to preserve lives and substance "in the people it rules" (1.5.34, 21). We must admit that permitting or enabling some real acts of wrongdoing is an inevitable consequence of the law's very attempt to prevent wrongdoing. It cannot but do this on occasion, not matter what precautions the law takes.

Evodius' defense of this law is therefore made on the grounds that a law is just when it preserves what belongs to each of its citizens against forceful loss as much as

possible. Normally it does this by empowering officers to make arrests, issue verdicts, and adjudicate claims in courts of law. In this case, however, it does so by taking the extraordinary step of allowing citizens to act in place of legal authorities when threatened by crimes against their life or goods or bodily integrity. These citizens act in place of law not only in deterring or punishing crimes, but in judging them: in giving them this freedom the law also releases them from at least some of the strictures that would bind any court of law. This suspension of normal procedure shows the importance of these principles—that, as a general matter, we should be masters of ourselves and our property and that we should not be deprived of them without our consent—and is conceivable only because a fundamental aim of the law itself is served by its suspension. Any law permitting self-defense, adopted for extreme cases, lays bare in a particularly strong way this principle of private preservation that must be a concern of the law of any political community.<sup>24</sup> The argument here, which seems to move toward the Lockean understanding of law as justified by the preservation of life, liberty, and property (Locke 1988, 268, 270-272, 323-324), is all the more striking once we consider Evodius' defense of the second law regarding military service, which brings to light another concern of political law, and another principle.

## 7. Evodius' long speech—the example of military service

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<sup>24</sup> See Cicero *On Duties*, 2.21.73: “In the first place, he who will administer a republic must see that each person has his own, and that public action does not result in a diminution of private people's goods...for republics and states have been constituted for this reason [*causa*] most of all—that their own things be possessed. For, even if human beings were gathered together by nature's guidance, nevertheless they sought the protection of cities in the hope of guarding their own things.”

Evodius' defense of the law regarding military service rests on different, but related grounds. When the soldier kills an enemy he acts as "a minister of the law," and therefore "easily fulfills his duty without lust" (1.5.34, 26-28). It is undoubtedly true that soldiers in wartime are the law's ministers. A soldier meets the enemy under orders from a great number of people, making his action the last in a long chain of decisions. That chain begins with the community's choice of leaders, who in turn authorize the war and oversee the armed forces, continues with the generals' approval of the plan of battle and the commanding officers' immediate orders, and then ends with the actions of individual soldiers. We see that all of these actions and decisions are governed by formal procedures codified in law. Of course, insofar as the law of self-defense in effect gives license to act in place of law, or to *be* the law in a threatening situation, those who exercise that right would also be "ministers of the law." The difference is that a soldier is under direct orders in combat, while someone defending himself is only "given the power" (i.e., the right) to do so (1.5.33, 16; 12). While the law would never punish someone for failing to defend himself, a soldier who failed to obey his orders would be subject to court-martial (1.5.33, 17, *ab imperatore*). As Evodius says here, the soldier has "his duty," which comes with an obligation of obedience (1.5.34, 27). It is obvious that a soldier's service is inconceivable without invoking some notion of duty and obligation, even if conscription into that service is voluntary. As we say, the soldier hears "the call of duty." This difference from the law of self-defense has far-reaching consequences, as we will see.

In fulfilling his duty as a "minister of the law" the soldier is completely free from lust (1.5.34, 27-28). By exonerating soldiers of the charge of lust from the very beginning,

Evodius flatly contradicts his earlier admission that, according to his definition, killing an enemy would be done from lust (1.5.32, 5; 8-9).<sup>25</sup> Under pressure from Augustine, however, he understands lust and duty as antitheses, so that something done in accord with duty cannot be motivated by lust. In other words, he believes that actions done to fulfill genuine duties are not blameworthy, so that actions that would normally be immoral (in this instance, killing) are not immoral when done as a consequence of fulfilling one's duty.<sup>26</sup>

This leads to the question of what makes the law commanding military service a source of genuine, "compelling" duty (1.5.37, 43). It cannot be the mere fact that the law commands it. We sometimes blame soldiers as unjust for doing precisely what we normally expect them to do, which is to follow the orders of their superiors. This conversation has taught us the same lesson: soldiers under order cannot simply rely on the law's authority to justify their actions. The law must be a just law to be a source of genuine duty. Evodius knows as well that the mere fact that soldiers are "ministers of the law" is inconclusive, since the justice of their actions depends decisively on the justice of that law, and so he turns immediately to a defense of it.

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<sup>25</sup> Evodius had not mentioned lust in his account of the law of self-defense, where he simply relied on the distinction between "greater and "lesser" wrongdoing. The fact that he associated acts of self-defense with "lesser acts of wrongdoing" at least suggests that those acts are motivated by lust to some degree. See Cotta on the tension between justice as "social utility" and justice as "morality" that Evodius experiences here (1961, 164). This point is picked up in the second half of his speech, where he wonders how he can defend those who make use of the license to defend themselves from attack.

<sup>26</sup> I do not think Evodius would deny that many soldiers are in fact motivated by lust. His statement means that a soldier, insofar as he fulfills his duty (which presumably includes obeying the commands for the right reason), does so without lust. He would probably deny that bloodthirsty or vindictive soldiers were fulfilling their duties.

Evodius offers two arguments in support of the military law. He begins by appealing to the lawgiver's moral character to guarantee the law against the charge of lust: the law "that has been laid down for the sake of defending a people" is unable to be accused of lust "if indeed he who laid it down...was able to do it entirely free of lust" (1.5.35, 29-31). This is a very high standard for law, as is evident from Evodius' parenthetical remark that such a thing would be to lay down a law "in accord with the command of God—that is, what eternal justice prescribes" (ibid.). Perhaps for this reason he leaves off this line of argument for a second, where he separates the goodness of a law and the lawgiver's motivation: as he says, "a good law can be laid down by a man who is not good" (1.5.35, 31-34). Such a law is therefore not necessarily obeyed out of lust, even if it owes its origin to lust. The example Evodius gives to illustrate this point is a law forbidding seizing (*rapere*) women, even for marriage,<sup>27</sup> that has been passed by a tyrant after receiving a bribe to do so (1.5.36, 34-38). This particular law does not become bad simply because its source is "unjust and corrupt."

These two lines of argument can be reconciled if we assume that Evodius considers a law to be "good" insofar as it is identical to the law a good lawgiver (i.e., one without lust) would lay down, even if its being laid down is motivated by lust. Good laws can therefore result either necessarily from a pure motivation or accidentally from a lawgiver's lust. The standard for a good law remains the law that would be laid down by someone free from the influence of lust, which Evodius equates with any law that God Himself

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<sup>27</sup> Augustine clearly makes a reference to the Roman rape of the Sabines.

would command or that eternal justice would prescribe. Such laws might seem useful to bad lawgivers as well, who thus hit upon laws worthy of obedience by accident.

As for the particular concerns or objects of those laws that would be laid down by a good lawgiver, who may be imitated by a bad lawgiver, Evodius' example of a law against rape brings us back to the object of law that Evodius had announced at the beginning of his defense of the law that soldiers obey, which he then repeats in his conclusion to this argument. He had begun by saying that the "law laid down *for the sake of defending the people*" could not be accused of lust (1.5.35, 28-29), and he now says that the law "that *for the sake of defending the citizens* commands hostile force to be repelled by the same force" can be obeyed without lust (1.5.36, 38-40; emphasis mine). This end or purpose—the defense of the people or citizens—is apparently the justification in Evodius' mind for the law that the soldier obeys, an end that he assumes would govern even the laws laid down according to God's will or as prescribed by eternal justice (1.5.35, 30-31). This end apparently governs not only the military law, since Evodius says his justification of soldiers applies to "all other ministers" of the law who are subject to "each one of the powers" (*potestatibus quibusque*) according to "right order" (1.5.36, 40-41).<sup>28</sup> The example of rape at least suggests that Evodius understands this "defense" of the people or the citizens as a defense of their lives and goods and their liberty to dispose of their property according to agreement rather than force. As in the case of the law allowing self-defense, a good law seems to be ordered by the task of defending its citizens against those

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<sup>28</sup> Following Burns' suggestion that *iure atque ordine* is a hendiadys (2012, 128n10).



who would take away their life or property or their liberty freely to dispose of their lives and property.

The variation in Evodius' formulation from "defending the people" to "defending the citizens" indicates the limits he sees to the law's rightful task—a "good law" does not have to defend the lives and rights of non-citizens, but only of its own. Presumably this is because asking a law to do so would be asking for something impossible, so that even a perfect law (passed at God's command or in accord with eternal justice) would not attempt more than that. This reminds us of the one essential part of Evodius' defense of the first law that he does not repeat in his defense of the second: the fact that a just law performs its function *as much as possible*, given the circumstances and necessities to which it is subject. In the case of the law of self-defense, the law had to accept some "lesser wrongs" as a matter of necessity in order to prevent greater ones from occurring. A similar necessity faces the law in the case of compelling military service, in the first place because it cannot be expected to defend the rights of those outside its jurisdiction. But more importantly, it faces the necessity of accepting that some of its citizens will lose their lives as a price for the defense of the lives and goods of the community: it can only defend its own citizens as much as possible. The law faces the necessity that some citizens must carry the burden of defense of the whole community and even lose their lives in that defense.

But this gives rise to a difficulty, if in fact the defense of military service is grounded on soldiers' service to a law whose fundamental purpose is the protection of its citizens' lives and property. We saw in the case of self-defense statutes that this purpose was so fundamental that it led the law to give license to its citizens to defend themselves

on their own initiative from threats to their life. In the case of soldiers, however, the law commands them not only to harm the enemy, but to face “bloodshed,” which of course may be the enemy’s or their own (1.5.33, 16). In the face of this very real threat to their lives, we would not excuse these soldiers if they took matters into their own hands and did what was necessary to save themselves. While the law would excuse someone acting to save his life from an assailant, a soldier who did the same would be subject to court-martial. Even if both laws have the same purpose—preserving the citizens and securing their property as much as possible—it seems to be impossible to speak of the law governing military service merely by analogy to the law permitting self-defense, since there is no guarantee that the goals of common and individual preservation will align in every instance.

How then could this preservation of the lives and property of the community as a whole, which in Evodius’ view gives shape to the law and grounds its commands, be binding on an individual citizen even to the point of sacrificing his own preservation for it? We come back to Evodius’ use of the term “duty” earlier—he clearly sees that it is a duty to obey such a law even at great risk to oneself. This “duty” does not seem to be grounded in the claims of life or substance alone, but in those of virtue, a word that Evodius introduces in the second half of his speech (1.5.38, 50; Burns 2012, 142-143). It appears that only consideration of this moral perfection, whose possession is ultimately more important than even life or substance, makes obedience to such a law a matter of genuine duty (Burns 2012, 180-181). I consider this conclusion in greater detail in the section that follows.

## 8. The task of political law

It is important to pause here and put together the observations about political law that have come out of Evodius' defense of these two laws. What justified the law in both cases is the particular end that it served. In the case of the law permitting self-defense, that end was preventing wrongdoing as much as possible, with wrongdoing defined as violations of others' life and property. Positively stated, the end of the law in this case is the preservation of those goods. In the case of the law commanding military service, that end was the defense of the community as a whole from its enemies, which is of course impossible without the risk and sacrifice of some of its citizens. Two ends or principles of political law thus came into sight, which may be generally stated as the principles of right and duty.

Our first instinct, so to speak, under the influence of the dialogue's order, in which Evodius takes up the law grounded in right before the law grounded in duty, and under the influence of liberal political philosophy, may be to attempt to reduce these apparently conflicting principles a single end, or to the individual right to free use of his life and property. Doing so would require deriving the duty to military service from our individual concern for the preservation of life and liberty by describing or deducing these duties as a continuous series of actions in the service of those original, individual claims. One could say that the position of a people faced with an enemy is analogous to that of an individual faced with an armed assailant, only that the enemy must be met with greater force. Repelling an enemy therefore requires the unified action of a whole society that only government and law can coordinate. The forceful resistance that the law coordinates would

entail great risk to life and property, but one could say that we would undertake this same risk in resisting a single, armed assailant, and that such risk would have to be weighed against the risk of not resisting the enemy. And yet, while this identification of self defense with the common defense may hold in some instances, perhaps in very small communities or in times of great danger against a particularly savage enemy, our very use of the term “duty” points us to the inadequacy of such a deduction (Deane 1963, 156, 160).<sup>29</sup> It is much clearer that some genuine sacrifice of individual lives and property is called for by the community in time of need, individuals whose lives and property would almost certainly be better preserved by shirking precisely those military duties.

Our sense that there are certain laws that it is our duty to obey—such as the law that commands that the community be defended against enemies—must therefore have another basis. That basis, as stated above, must be a moral quality or perfection of the human being the possession of which is to be preferred even to personal security, wealth, or any other bodily good—something that Augustine and his predecessors called virtue. In the case of the duty to obey the law that commands the defense of the community, the specific virtues of justice or courage are most relevant. Our sense that soldiers really do have a duty to obey the military law, as do we should our community require it, implies that these virtues of justice or courage, which are gained or maintained by this obedience, are something honorable or choiceworthy in a way that bodily goods and pleasures are not. The flipside of this is our sense that the preservation of our lives and goods is not worth

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<sup>29</sup> As does the account of Thomas Hobbes, who first conceived of our moral duties as a deduction from the single, fundamental right of self-preservation: Hobbes conceded that desertion or fleeing the field of battle, so long as it did not involve treachery, was dishonorable, but not unjust, presumably because he deduces our just duties from our overriding concern for our individual preservation (Hobbes 1996, 151-152).

the price of cowardice or injustice. The consequence of this line of thought is that, insofar as a political law makes reference to duties or enforces claims to duties (for instance, in punishing deserters), it shows itself to be concerned with a virtuous way of life. A law that assumes we have not only rights, but duties, therefore assumes some answer to the question of what that virtue is that constitutes human perfection, or the truly human life, at least insofar as it assumes that obedience or dedication to its commands in some way defines the particular virtues.

Does this analysis of the end of law fit our experience as citizens of a liberal democracy, which does not explicitly claim to cultivate virtue in its citizens? Does this perhaps reveal more about Evodius' perspective as a Roman citizen than our own? I think we at least have a similar experience of law, insofar as we sense that our laws are more than rules of prudence for maximizing our individual health, security, and possessions. Cicero contrasts virtue and "one's own conveniences" as standards of action, and writes that "virtue is most of all discerned in spurning and repudiating pleasure" (*On Duties* 1.2.5; *On the Laws* 1.19.52): is our experience of law that it only asks us to resist pleasure as a means to greater pleasure, or is there another principle at work as well? To take a simple example, we may attribute our indignation at someone who fails to pay his taxes to our sense that he has gotten a "free ride" while we have suffered a loss, but can our support of welfare programs or other public assistance for the poor be explained without recourse to the principle that we have some real duties to the poor? Perhaps we can justify these initiatives on the grounds that such assistance puts the poor in a position to contribute to our own well-being, thereby making a return on our "investment," or we can say that giving

something to the poor heads off the possibility of a class conflict that would endanger our own property; but such explanations seem like weaker substitutes for the sense of duty that provides the first impetus for such measures. A more compelling example is the enduring attraction that “the rule of law” has for us: do we see our service on juries, for example, as an extension of our regard for our own aggrandizement or as a solemn duty to uncover the truth and render an impartial judgment? Can we explain our demand for the integrity of public officials without reference to our sense that bribery or greed perverts justice and dishonors the official, regardless of whether such means may benefit us?<sup>30</sup> Is there something about the rule of law, with its demands of impartiality, regard for due process, and consideration of the rights of others, that can only be explained or grounded by the perfection in character that such a way of life bestows on an individual or a people? While liberal democracy may seek to minimize making explicit claims about duty or virtue, we retain a sense of our duty to obedience to the rule of law that is not as mercenary as it may first appear.

The mixture of these two general principles of political law—right and duty—is evident in the document that began our own experiment in self-government. The Declaration of Independence justifies the dissolution of political ties between the American colonies and Great Britain by a direct appeal to the “unalienable Rights” of life, liberty,

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<sup>30</sup> See Cicero, *On Duties*, 2.21.75: “The chief thing in all caretaking of public business and duty is that the least suspicion of greed be driven out.” He repeats the point a little later: “There is not vice more revolting...than greed, especially in princes and those governing the republic” (2. 22.77). The context of these statements is a discussion of beneficence or liberality (2.15.52; 1.7.20) as it relates to the republic, as opposed to private individuals (2.21.72). It stands as one qualification to the argument, cited above (note 25), that the purpose of the political community is the protection and increase of individual property. One question in the long section on administration (2.21.72-1.24.87) is whether the rules of conduct that Cicero presents under the heading of expediency (the subject of Book II as a whole) can really be understood without appealing to a principle of duty (cf. 2.22.77, for example).

and the pursuit of happiness. It insists that these rights, which belong to all men by nature, have been violated by “a long train of abuses and usurpations” and that it is not only the right, but the duty of a people to throw off a government that perpetrates such violations and “to provide new guards for their future security.” This tempts us to think that the duty to rebellion against an unjust government is simply derived from the concern for security or for individual rights. But the last line of the Declaration, in which the signers pledge “our Lives, our Fortunes, and our Sacred Honor” for its support, seems to support the point made above: there remains a discontinuity between the concern for one’s substance and one’s liberty and dedication to a dangerous course that could lead to the loss of everything one possesses. The bridge between the rights invoked in the Declaration and the Revolution is apparently the principle of honor: it is a matter of honor to stand up for the liberty of a people and risk one’s fortunes for the establishment of a free way of life. This principle of honor seems to indicate the thought that securing and maintaining a free way of life is a duty not only as a means to security and aggrandizement, but more profoundly as an instance of choiceworthy action demanded by the virtue that constitutes the perfection of the human character and that is therefore to be preferred to those lower concerns. Insofar as this is true, there lies at the bottom of our laws a conception not only of individual rights, but of the human virtues that render our way of life worthy of devotion and compels its defense.

This discussion of the complicated objective or end of political law and the specific example of the American founding fathers has prepared us for the subject of the next part

of Augustine and Evodius' conversation. That subject is the constitution of a political community. The constitution is the foundation for a community's particular laws and the channel through which duties come to its various ministers and officers. The importance of this fundamental law became clear in Evodius' defense of the military law. We saw that the commands that reached the soldiers were delivered via a long chain of laws and institutions. In our case, this chain is established and maintained by our constitution, which determines to what "powers" each of our "ministers of the law" are subject and the "rightful order" that governs that subordination (1.5.36, 40-41). By providing this arrangement of "powers" and "ministers," this constitution provides the means of adjudicating criminal and civil cases and mobilizing defense forces. It therefore appears to be the ultimate means of achieving the ends of political law, or of preserving and defending a community and its way of life. It is so indispensable to these ends that its preservation is practically identical to the preservation of the community: as Augustine says, a "people" is made up of human beings "associated" by this single law (1.7.52, 2-3).

It is not surprising, then, that Augustine takes up the subject of constitutions in the next section of the dialogue, asking what makes a good constitution and what would justify any change in the constitution, whether by peaceful reform or constitutional revolution. Our discussion of the task of political law, as it has come to light in Evodius' speech, indicates that a good constitution looks in two directions. On the one hand, it must look toward the defense of individual rights to life and property within its community, since guaranteeing those rights as much as possible appeared to be a fundamental task of political law. On the other hand, a community's constitution has some regard for the cultivation of



virtue, or of a way of life that is consistent with the individual sacrifices a community inevitably asks its citizens to make. A major task of the next section of dialogue is to be more precise about these ends that the constitution is meant to secure, which together constitute what Augustine calls the *res publica*, which we can translate as the “common weal,” “common good,” or “public affairs.”

For now, we must return to the action of dialogue and to the second half of Evodius’ speech, in which he faces the contradiction between his defense of political law and his stated opinion that lust is the true measure of wrongdoing. This contradiction is the basis of what I have called Evodius’ “crisis of conscience,” which brings the first half of the dialogue to a close.

#### 9. Evodius’ long speech—a crisis of conscience

In the second half of Evodius’ long speech he suddenly returns to the example of self-defense and the strict doctrine of lust (namely, that the presence of lust, or “the love of those things one can lose unwilling,” defines wrongdoing) that he had temporarily abandoned (1.5.37, 42-38, 56). Having exonerated the law from the charge of injustice, he does not see how he can exonerate the human beings who avail themselves of its license in cases of self-defense, since the law does not “compel” them to kill for those goods of fortune, which are not in our control—life and liberty—or genuine goods, which are wholly in our power—like the virtue of modesty (1.5.37, 43).<sup>31</sup> Here he even goes so far as to doubt whether any goods of fortune can really be considered “our own,” since they are not

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<sup>31</sup> He does not question the commands of military service: he sees those duties as compulsory in a way that self-defense is not (1.5.37, 42-44).

wholly in our power (1.5.38, 53-54). This doubt has very great consequences, since the distinction between what is our own and what is not and the rights based on this distinction had grounded his defense not only of the law of self-defense law, but also of the law of military service, since a law that commands the defense of a community presumes that community has something of its own that it can rightly preserve (1.5.34, 23-26). Without the capacity to make this distinction no non-arbitrary arrangements of rights and property are possible.<sup>32</sup>

We can see that the pressure of the conversation has pulled Evodius in two different directions. He is caught between his understanding of lust, which would make complete indifference to goods of fortune the standard of morality, and his common sense attachment to his community's laws, which secure precisely those goods in a just arrangement to the extent that it is possible. While he is attracted to the possibility that rigorous indifference to these goods is the mark of true morality, he cannot really think that all arrangements of these goods of fortune are equal, or that there is no right to possess these goods that includes also the right or obligation to defend them. Like us, he will not blame someone who resists a violent rapist or bandit, and he positively admires those who risk their own lives and possessions to punish such people and secure the lives and rights of others. Like us, he considers some of these actions on behalf of others to be a matter of duty.

The conflict between these attachments comes to a head when Augustine responds to Evodius' concluding confession that he cannot discover how to defend those who kill in

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<sup>32</sup> The denial of any basis for determining what is "ours" is only a legal expression of the utter indifference to temporal goods that attracts Evodius. True indifference to temporal goods would mean neutrality with respect to any arrangements of those goods.

self-defense with the disapproving remark that “much less am I able to discover why you seek a defense for human beings whom no law accuses” (1.5.39, 57-58). This statement leads Evodius to reveal his greatest fear, which is that the “more vehement and most secret law” of divine providence might hold someone responsible for something—being “polluted” by human blood for the sake of goods of fortune—that no human law would ever blame (1.5.39, 60-64). While the law “written for ruling a people” punishes only what suffices “for procuring peace among ignorant human beings, and as much as are able to be ruled through human agency,” the justice of divine providence is not bound by such limits (1.5.40, 64-68). His crisis of conscience is therefore caused by the possibility that divine providence operates under the understanding of lust that he has formulated on the basis of Augustine’s earlier suggestion about good people’s independence from goods of fortune (see again, 1.4.30, 64-1.4.31, 73). This understanding is of course at odds with Evodius’ deeper moral instincts, and indeed with the understanding implicit in any human law.

Surely Evodius’ Christian faith contributes to his moral crisis by telling him that the definitive order of justice is the order of divine providence, which stands above all human orders.<sup>33</sup> But it is also possible to see that crisis in light of Evodius’ own account of his attachment to political law. The first half of his long speech brought to our attention the twofold task of political law, which includes both the preservation of the lives and property of the citizens under its jurisdiction and the cultivation of the virtues and way of life that are necessary to sustain that community as a whole. While it is often concerned with guaranteeing and restoring individual rights to the free use of life and property, it also

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<sup>33</sup> For a discussion of the effect of Christianity on Evodius’ moral opinions, see Burns 2012, 212-231 (for the effect of Christianity on his confusion regarding self-defense in particular, see 223-224).

teaches that virtue is the most important possession for a human being. It is perhaps this twofold intention, working on Evodius, that is at the root of his crisis of conscience. He has learned the lesson that virtue is the most important consideration in one's action, even greater than life or any other possession, and that virtue might require giving up those possessions; but his notion of virtue, or those of rules of morality that define the life of virtue, remains decisively shaped by that law and its ends, which include the defense of those possessions. He therefore vacillates between simple deference to the law of his community and a moral extremism and pacifism that appears to fulfill more completely and consistently (and on independent grounds) the moral demand that the law already asks of him.

Evodius' dilemma raises the question of whether there is a standard of morality independent of the authority of law that does not simply denigrate or disparage human law and the goods it protects. The doctrine of the eternal law that Augustine introduces immediately after this and explains in the remainder of Book I seems to be such a solution. This solution is presented in three parts. It begins from a consideration of constitutional change and the common good or common weal (*res publica*) that is the ultimate ground of any constitution, from which a rough distinction between temporal and eternal law is drawn. It continues with a consideration of the "ordered" or virtuous human being as seen under the light of reason and the eternal law. It then concludes by showing how the temporal law relates to this definitive standard of morality. In the next chapter we take up the first of these parts.



### **Chapter 3**

#### **Foundations of Law: the Common Good and the Eternal Law**

In the last chapter we treated the first part of Book I of *On Free Choice*, which largely consisted of a dialectical examination of Evodius' opinions concerning wrongdoing. It culminated in what may be called his crisis of conscience, in which he confessed that he is haunted by the prospect of divine providence punishing what the human law permits. In this chapter we begin our consideration of the second half of Book I, where Augustine takes the lead in order to redirect their conversation toward an investigation of eternal and temporal law [*lex aeterna et lex temporalis*]. Augustine's intervention signals the beginning of a fundamental change in the character of his conversation with Evodius. From this point forward, Augustine's leading questions and long speeches are met with Evodius' agreement and only occasional dissent.<sup>1</sup> The result of Augustine's efforts is that Evodius no longer feels this conflict between divine justice and human law.

The dialogue's positive teaching is presented in three parts. The subject of this chapter is the first step<sup>2</sup> of that presentation, which is to prove the existence of an "eternal law," as distinguished from the "temporal law," and to uncover its fundamental moral precept. The evidence used to prove its existence is the phenomenon of justified revolution, which presupposes some unchanging standard above even the highest written,

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<sup>1</sup> There is one instance where Evodius dissents quite strongly from the argument (1.11.79-1.12.80), which will be taken up in Chapter 4.

<sup>2</sup> Augustine indicates that there is an order to the discussion (consider, for example 1.6.43, 11; 1.7.52, 1; 1.12.83, 29; 1.13.89, 1; 1.13.97, 90; 1.15.103, 3), which will become more apparent in what follows.

human law.<sup>3</sup> The major interpretive difficulty we face in following the text is to see what precisely Augustine indicates about this standard above human law. The examples of revolution that he uses indicate that this standard is “public affairs” or the common good [*res publica*], whose deepest expression is the common practice of a virtuous way of life and whose guardian is prudence. However, Evodius comes away from the discussion with an understanding of the eternal law and its relation to temporal law that is a simplification of the more subtle view indicated by Augustine’s argument. He understands the doctrine of the eternal law to emphasize the existence and availability of a further law above human law, which partakes in the commanding and absolute character of human law while avoiding the shortcomings of human law by the universality of its precepts. According to this doctrine, political change occurs by a direct application of the eternally binding commands that flow from the fundamental moral demand “that all things be most ordered” (1.6.51, 66), without the intervention of prudence. A careful consideration of the argument will show that this view, which Augustine will attribute explicitly to Evodius (1.6.50, 56), must ultimately give way to the more subtle view that Augustine indicates without explicitly stating.

A careful consideration of the argument will also make clear the connection between this first step of the dialogue’s positive teaching and the second, which is an investigation of human virtue. There Augustine finally takes up this crucial question, the

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<sup>3</sup> This ordinary beginning point for the doctrine of eternal law is missed by most interpreters, who associate the doctrine with Augustine’s Neo-Platonism or Stoicism. Chroust, for example, says that Augustine’s views on law constitute a “theological jurisprudence” based on a new interpretation of the Platonic ideas (1973, 57, 59, 78-79). This judgment is echoed in other interpretations (Smith 2015, 132; Torchia 1993, 263-4). I do not mean to dispute the ultimate ground of Augustine’s understanding of law: I only mean to show that in *On Free Choice* I Augustine presents the doctrine as following from ordinary moral experience and offers a critique of a more complicated, but also more superficial interpretation of the doctrine.

importance of which was indicated by the analysis of political law in Part 1 and underscored in this first step of the dialogue's positive teaching.

### 1. Augustine's Proposal

Augustine greets Evodius' "crisis of conscience" with praise, approving his distinction between human or political law and the law of divine providence despite its being "unfinished and less than perfect" (1.5.41, 71-73). However, rather than pressing Evodius to clarify and defend his views, as he has many times before, he seizes the initiative in order to make a new beginning to their conversation. Just as he had at the beginning of the dialogue (1.2.10, 3-1.3.14, 3), Augustine redirects their conversation by 1) restating the difficulty that Evodius is experiencing, 2) proposing a new question for their consideration, and 3) encouraging him to have faith that they will arrive at a clear answer to that question.

Evodius' difficulty at the beginning had been how human wrongdoing is not ultimately referred back to God, if human beings are God's creatures; the new question Augustine proposed (to replace the question whether God is responsible for evil) was "what is wrongdoing?" This question has guided the conversation to this point. Augustine restates Evodius' current difficulty as follows: "This very law that is laid down for ruling cities seems to you to concede many things and to leave them unpunished that are nevertheless avenged through divine providence, and rightly; for the fact that [the law laid down for ruling cities] does not do everything does not mean that what it does must be disapproved of" (1.5.41, 73-77; cf. 1.2.11, 13-18). This seems to be a fair statement of Evodius' perplexity. He thinks the human law is constrained in such a way that it cannot



but leave certain acts of wrongdoing unpunished, by necessity and therefore justifiably. Moreover, the human law should be approved of not only because it cannot be expected to do more, but because the things that it can do are positively good (1.5.39, 64-66; cf. 1.5.34, 20-23). But this slackness in the human law, however justified, haunts Evodius when he considers divine providence, which is not limited by the same necessities in vindicating injustice. Divine providence considers only the demands of complete and perfect justice, and therefore deals out punishments from which Evodius thinks only the wise are free (1.5.40, 69-70). As a result, he wonders whether doing something permitted by the human law, such as defending oneself from violent attack, may be marked as a transgression and punished by the law of providence.

Augustine's proposed solution to Evodius' difficulty is to look more carefully at this distinction between human or political law and the law of providence. "Let us discern, if it pleases," he says, "how far wrongdoing must be avenged through this law that holds peoples together in this life, and then what remains to be punished through divine providence inevitably and in secret" (1.6.42, 1-4; cf. 1.2.13, 34-36 and 1.3.14, 1-2 and context). Augustine's intention appears to be twofold. On the one hand, he seeks to make clear the precise power, and therefore limit, of human law, in order to give a surer foundation to Evodius' sense that the human law is worthy of genuine respect despite its flaws. On the other hand, he seeks to make clear the precise wrongdoing that cannot be dealt with by human law and must be left for divine providence alone, thereby clearing up any ambiguity regarding actions like self-defense that are permitted by human law but open to doubt from the point of view of perfect justice. Answering these two questions will

bring to completion the distinction that Evodius has begun to draw between the work of human or political law and providence.<sup>4</sup>

Evodius shows some reluctance to follow Augustine in this new inquiry. While he certainly desires the fruits of the inquiry, he fears that it may not be possible to come to the end, since he thinks it is “infinite” (1.6.32, 5-6). Augustine must therefore encourage him to persevere in the argument. He does so by reminding him, as he has at other points of their conversation, of his Christian faith and urging him to have the courage to “step out onto the paths of reason while supported by piety,” since “nothing is so arduous and difficult that it cannot become clearest and least obstructed with God’s help” (1.6.43, 7-8; cf. 1.2.12, 22-23; 1.2.13, 34-36 and context). These clear signs of despondency in Evodius should make us vigilant to see whether he is really able to follow all that Augustine says in the remainder of the dialogue.

## 2. The position of written law—stability and change

Augustine begins with two easy questions that get Evodius back into the conversation and restore his confidence. Taken together, these questions have the deeper purpose of making clear the basic position of any written law or constitution, and therefore the challenges that confront it.<sup>5</sup> Augustine first asks whether such a law, “promulgated in

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<sup>4</sup> It does not seem at first that further investigation into human law is necessary, since a consideration of the moral demands of divine justice should be sufficient to settle the issue: if the law of providence were known, Evodius (and we) could simply live by God’s law, following the human law insofar as its demands were not in conflict with God’s law. Augustine gives no immediate justification for his procedure. Based on the argument of the previous chapter, we can suspect that the discussion of temporal law continues because of the great difficulty, if not impossibility, of simply relying on a “higher law” for moral guidance. This is borne out by the argument, which ultimately presents a sophisticated case for deference to the temporal law.

<sup>5</sup> The answers to these two questions are the foundation for all the conclusions reached prior to Augustine’s introduction of the eternal law (1.6.45, 21; 1.6.46, 27; 1.6.47, 35; 1.6.48, 42).

writing, helps human beings living in this life” (1.6.43, 11-13). Evodius responds that it surely does, since “all peoples and cities consist of these human beings” (1.6.43, 14-15). It is not obvious how Evodius’ answer follows from the question. How does the fact that peoples and cities consist of human beings mean that written law helps those human beings? The missing step seems to be that these peoples and cities could not exist or be maintained without law (cf. Cicero, *On the Laws* 2.12). Written law is therefore helpful because it is essential to preserve the communities in which human beings live: political life (and therefore human life) is unthinkable in the absence of law.

However, Augustine’s reminder that it is helpful to those “living in this life” shows one clear limit to the help that written law provides. The phrase “human beings living in this life” makes us think of those no longer living and therefore no longer a part of the community, some of whom have died on behalf of the community at the law’s command. Unlike most community members, these people will not benefit from the peace that the law secures. Therefore, while the law is a help, even an essential help, it cannot help all human beings equally: it cannot necessarily help those who transgress the laws, nor can it help any longer those good people who die on its behalf.<sup>6</sup>

Augustine’s second question is whether “these human beings and peoples are of the same genus of things, such that they are unable to perish or to be changed and are utterly eternal; or are in fact changeable and subject to the times” (1.6.44, 16-18). This seems to be an unnecessarily abstract way of making a simple point about the variability of human

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<sup>6</sup> Burns 2012, 153. Of course, the community can give honors to the dead and perform religious rites on their behalf; but even if this is admitted, the law cannot be said to benefit all with respect to individual security, the first justification for the law.

life, but Evodius' affirmation of this variability (1.6.44, 19) turns out to have deep consequences for written or political law. These consequences become more apparent in the immediately following series of exchanges on constitutional change.

We may sum up what has come to light so far as follows. While written law is a great help to human beings as an indispensable means of holding together the communities in which they live, the communities and human beings that law governs are always changing. This means that laws made for a particular set of circumstances may not be suitable once those circumstances change. In other words, the fact that peoples and communities change means that the written law, while undoubtedly receiving much of its power from its unchanging character, nonetheless faces the necessity of adjusting to the prevailing conditions in the society it rules. The result of this may be as simple as changing particular laws or passing new ones; more rarely, it may be constitutional reform; even more rarely, it may be revolutionary constitutional change and the founding of a new community. It is therefore not surprising that Augustine takes their remarks about the "genus" that includes human beings and political communities to be the logical prelude to a discussion of these extreme and rare instances of constitutional change.<sup>7</sup> Augustine thereby continues his practice, begun with the earlier discussions of slaves killing their masters and self-defense and military laws, of confronting us with extreme political examples in order to bring to light the fundamental moral and political principles revealed in those cases.

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<sup>7</sup> I use the term "constitutional change" because Augustine speaks of changes in the laws concerning who rules in the community.

### 3. Constitutional change—democratization and the common good

Augustine's two examples of constitutional change (1.6.45-46) are worth quoting in full, although I will take up the second example in full only in the next subsection:

Augustine: Therefore, if there should be a people, well moderated and serious and a most diligent guardian of the common utility,<sup>8</sup> in which everyone values his private affairs less than public [affairs],<sup>9</sup> surely the law is rightly laid down that permits this people to create magistrates for itself, through whom its own affairs, that is, the public's, may be administered?

Evodius: Rightly indeed.

Augustine: Further on, if the same people, gradually having become depraved, should prefer its private affairs to public affairs and consider their votes for sale and, having been corrupted by those who love honors, should commit the government [*regimen*] to these shameful and criminal men; surely again rightly, if any good man has then appeared who is most capable, would he deprive this people of the power of giving honors and reduce it to the choice of a few good men or even one?

Evodius: This also rightly.

The first example is the simpler one. Here a people of good character is entrusted with the responsibility of electing its own rulers. The people's qualification for the franchise is that it is moderate and serious, which is shown by its diligent guardianship of the common utility. This guardianship is explained in turn as each person's valuing public

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<sup>8</sup> *communis utilitas*. What is *utile* appears to be the equivalent of *sumpheron* ("advantageous"; see, e.g., Aristotle *Nicomachean Ethics* 1129b15). Cicero's task in *On Duties* is to reconcile what is *utile* with what is *honestum* (honorable, noble, moral; akin to Greek *kalon*) (1.4.14, 2.3.9, 3.8.35, 3.18.75).

<sup>9</sup> *rem privatam...rem publicam*. It is difficult to convey in a single translation the meaning of *res publica*: the most obvious and familiar translation would be the common good, common weal, or commonwealth (as it is in Hobbes, for instance), but Augustine clearly distinguishes between "common" and "public" here, and the untranslatable *res* has both the general sense of "thing" or "goods" as well as actions or deeds. In my discussion below I have often translated it as "common good" for the sake of simplicity. It should be kept in mind, however, that Augustine clearly means for it to stretch between something low (money, substance, property held by the community) and something high (the cultivation and practice of a virtuous life in common).

affairs (i.e., the common good) more than his private affairs. What it means to value public affairs is shown by contrast with the example of the depraved citizens of the second example, whose concentration on private affairs leads them to sell their votes to ambitious criminals. In this situation, both rulers and ruled are motivated solely by private gain, whether for money or honor, and use flattery and bribery to achieve their own ends and enrich themselves. The common utility, understood as the *res publica* (as opposed to the *res privata*), is then not simply what results from each person's pursuit of his own aggrandizement, but rather what results from some subordination of each person's own concerns to those of the community as a whole.

This conclusion about the common utility is consistent with what we discovered about the aims of political law in Chapter 2. There we saw that good laws had as their concern not only the preservation of the lives and property of individual citizens and their liberty to use these goods without coercion, but also the maintenance of a way of life for the community as a whole that could be understood only in light of a principle higher than mere bodily existence. Just as we saw that the virtuous way of life commensurate with the demands that the community as a whole makes on its members could not be derived simply from each individual's concern with his own survival, so it seems that the public affairs of a good people are not constituted simply by each person's attempts to prosper in his private enterprises. Just as it seemed that the duties prescribed by the laws, such as the duty to risk one's life on behalf of the community, could only be understood as grounded in a choiceworthy way of life higher than mere life (i.e., the life of virtue), so it seems that the

common good of a community can only be understood as grounded in dedication to something higher than private aggrandizement.

Returning to Augustine's example, we have no problem agreeing with Evodius that the franchise ought to be extended to this virtuous people. The law granting them this right thus appears to be "laid down correctly." It is not immediately clear from Augustine's description whether this is an instance of democratic constitutional reform, such as the institution of the Tribune in the Roman republic, or of democratic revolution, like the American or French Revolutions. Is the law being laid down an amendment to an existing constitution or part of a constitutional refounding? The first case is obviously not so radical an accommodation to changing circumstances, since constitutional reform takes place via the official legislative channels of the original constitution. The second case, however, is a much more radical action, since it necessarily involves a transgression of the original constitution, and therefore a more direct appeal from the constitution to some higher moral standard.<sup>10</sup>

We have seen what that standard is, at least in name—the common utility, public affairs, or the common good. The reason given for democratization is that the people deserves to be included in the government. Their merit consists in their being capable judges and guardians of the common good. But this articulation of the justification of the democratic principle also indicates its limit: to say that a people deserves to be included in the government because of its devotion to the common good of the community implies that a people deserves to be included in the government *only* when it is devoted to the common

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<sup>10</sup> I will suggest below that this is more likely an example of constitutional reform than revolution.

good. The democratic principle thus reaches its limit when the people is no longer of the sort that devotes itself to the common good. This is the point of departure for Augustine's second example of constitutional change, in which our consideration of the common good as justification for political reform will be deepened.

#### 4. Constitutional change—oligarchic or monarchical revolution and prudence

In the second example we have the same people in a degenerate state, where votes are for sale and criminals entrusted with the government. Here the citizens have made a mockery of popular government. The cause of this degeneration appears to be the preference for one's private affairs at the expense of public affairs. Here, Evodius agrees, a revolution that takes away from the people the "power of giving honors" and restricts it to the "good men" of the community, who in this case must be few or even one, is justified. The principle here is that the good members of the community should rule, which means those public-spirited people genuinely devoted to the public affairs of the community. This is the same principle that was advanced in the first example: there the franchise was extended to include all those who showed themselves to be devoted to the common good; here it is restricted to exclude those who lack such dedication.

This example is more difficult than the first because we tend to think that the legitimacy of a constitution comes from popular consent and therefore to equate legitimate government with democracy. But I do not think that we elevate the democratic principle above all other considerations. We can certainly think of a few examples of popular governments in history that ought to have been overthrown, the most obvious being the



Nazi regime in Germany. And in our own time we have been chastened by our attempts to encourage popular government in the Middle East. We have seen, despite the enthusiasm that greeted the Arab Spring, the terrible abuses and injustices that democracy can perpetrate in the name of majority rule. These experiences point to the fact that, even if democracy is in principle the best form of constitution, a democratic constitution can never be beyond reproach for the simple fact that it is democratic. The considerations that normally make democratic or republican government so compelling—e.g., the preservation of human rights, individual liberty, self-government, or the rule of law—are nonetheless not automatically served by any merely democratic government, as opposed to a liberal one. In these situations we are forced to admit that rejecting democratic government, whether by failing to encourage it or by abandoning it, may be justified.

Augustine shows us the consequences of this concession in the way this second example of constitutional change departs from its linguistic parallel in the first example. He does not say here that “surely the law is rightly laid down that restricts the people’s power of giving honors.” Instead, he says that “surely again rightly...would he deprive this people of the power of giving honors” (1.6.46, 30-21; cf. 1.6.45, 23-24). At issue is the absence of “law” in this second example (Burns 2012, 159). The difference in the constructions points to this fact: while a democratic constitutional change could take place under the auspices of that constitution (e.g., the English Reform Bill of 1832 or our Nineteenth Amendment), the oligarchic or monarchic change suggested by the second example would almost certainly take place in the face of massive opposition, not only from the depraved majority who are empowered under the present constitution, but also from

more decent people who are simply loyal to the established order. This fact—that one could not effect an oligarchic or monarchical change using the legislative procedures established under the democratic constitution (see 1.6.47, 37-38)—is probably the reason that Augustine does not speak of this change in terms of “laying down a law.” In Augustine’s presentation, this new constitution owes its origin to the act of a single man—a “good man, who is most capable”—not a law.<sup>11</sup>

Who is this “good man,”<sup>12</sup> and what must he be capable of? If we look at the sentence as a whole, we see that his introduction interrupts the flow of the sentence and adds an additional protasis to Augustine’s question to Evodius (“If the same people...then surely again rightly, if a good man has then appeared...would he deprive”). Augustine’s emphatic use of “man” (*vir*), rather than “human being” (*homo*) indicates in the first place that this revolutionary must be physically capable: he must be able to wrest power away from a people against its will, which requires the capacity for violence.<sup>13</sup> He and his followers must be able to disregard and indeed subvert openly the highest law of the land.

Even more importantly, however, this revolutionary must be capable of effecting these changes in a way consistent with the justification for his actions (Burns 2012, 167). After all, the oligarchic or monarchic principle that the revolutionary appeals to must stand or fall by the same measure as the democratic principle, which is its contribution to the common good. The new constitution that he establishes must therefore make a claim to

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<sup>11</sup> For these reasons I assume that the first example is of democratic constitutional reform, rather than revolution. This interpretation also brings both examples into harmony with Roman history.

<sup>12</sup> Cf. Cicero’s *On Duties*, 1.7.20, where he says that “men” are called “good” most of all when they possess the virtue of justice, in which there is “the greatest splendor of virtue.” In context, it seems that Cicero is comparing the power of justice with the virtue of wisdom or prudence.

<sup>13</sup> The Latin *vir*, like the Greek *aner*, is clearly distinguished from “human being.” Augustine’s usage clearly relies on its etymological relation not only to *virtus* (virtue), but to *vis* (strength or power).

revive the public affairs that had withered under the old constitution. Surely the damage caused by their violent efforts to overcome the obstacles to establishing this new order must necessarily detract from the revolutionaries' claim to be reviving the common good. If, as the argument has suggested, the most important ingredient of that common good is the cultivation of a virtuous way of life in common, it is certainly not guaranteed that a new constitution—originating in the terrible bloodshed, distrust, and hatred that civil war foments (recall *Confessions* 3.8.16, 44-46)—will in fact revive public affairs. The justification for any revolutionary action would surely have to take this damage into account (Thomas Aquinas, *Summa Theologiae* I-II, Q. 97, a. 2).

This brings us to see a last difference in Augustine's formulations of these two examples. The first began in the form of a conditional sentence ("If there should be a people..."), but ended in the indicative mood ("surely that law is laid down rightly..."); in the second case, Augustine not only adds an additional condition to the beginning of the sentence ("If the same people should prefer...if any good man has then emerged..."), but also maintains the subjunctive mood in its conclusion ("He would deprive..."). He therefore stresses the conditional justice of this revolution, meaning that it depends decisively on the appearance of a particular man of extraordinary capacities who is able to see it through. It is therefore not justified by the degraded circumstances alone, in which a virtuous common life has all but disappeared, but by the capacity of the leader of a revolutionary movement to effect a genuine improvement in those circumstances, one that is worth the inevitable damage to the common good—most fundamentally, to the practice of virtue—that must be inflicted in order to bring it about. Of course, if there is a complete

absence of virtue in a community, one would be justified in any revolutionary action; but it is unlikely that there would not be some kind of life worth preserving in any actual decayed situation—life that might be even further endangered by precipitous revolutionary activity. This means that the justification for revolutionary change is inseparable from a prudential calculation of what is possible in a given set of circumstances.

##### 5. Constitutional change—a summary

Now is a good place to collect the observations about constitutional change that Augustine has led us to see. We have seen that the highest political laws—constitutions—are made for societies and peoples that exist in changing conditions, which means that certain circumstances may obtain that render those constitutions unjust. As for what would allow us to appeal from so venerable a law—on which rests the distinction between, on the one hand, police and soldiers (who are its ministers) and, on the other, criminals and murderers—we have to consider what purpose any good constitution ought to serve, in whose name a given constitution could be legitimately changed or abandoned. That purpose, Augustine shows us, is the common utility or public affairs. Any constitution defines the orders and institutions through which a society will conduct its public affairs, which means the constitution is itself ultimately a means for conducting these affairs. A democratic constitution, establishing a democratic arrangement of “powers” and “ministers” (1.5.36, 40-41), is justified when the people are of such a character that they use democratic institutions to conduct this business, or to accomplish the ends that all members of the community ought to share in. But when that people becomes depraved

and sells its votes in the hope of private gain, its right to be consulted in matters of public business is lost and the constitution can be changed to empower someone else, *provided* that someone is actually capable pulling off such a feat.

The argument that has emerged from the dialogue indicates that the deepest element of public affairs—that public business which is the ultimate ground of legitimacy for the constitution—must be the cultivation of a virtuous way of life. But if this is in fact the deepest element of the common good, we are led to an additional difficulty. Elevating the common good in this way, or justifying all political law (even constitutional law) by its contribution to the common good, has the effect of making all law as such subservient to the common practice of virtue. Therefore no particular law—even a law determining the membership or boundaries of the community—has any justification or standing independent of its ultimate contribution to the practice of virtue in the community (Burns 2012, 175-177). For instance, it cannot be expected that a constitutional refounding will improve the life and character of every member of the old community, or that all those members will cease to be obstacles to the revived way of life of the new constitution. The revolutionary’s mandate to put the practice of a virtuous way of life on surer ground than under the old constitution may therefore necessitate refounding the community to exclude recalcitrant elements of the old community or merging some part of it with another preexisting community (Burns 2012, 180-181). The principle that comes to light in justifying constitutional change—the common good—therefore has even more radical effects than we saw before.

This makes the question of what exactly constitutes the life of virtue—a question that has been in the background of our discussion for some time—all the more urgent. We continue to return to the unsatisfying formula of “anything for virtue”—all laws are ultimately means for bringing a virtuous life into being and preserving it, which means they deserve no respect independent of their contribution to that (Burns 2012, 180). But this precise end of political action has yet to be defined in any meaningful sense. Surely the life of virtue is not compatible with the transgression of all ordinary moral limits, or with treating others in any way one likes. We have to know more clearly what this life is whose cultivation is the end of any just law and the justification for any constitutional change in order to be clearer about the means permissible in bringing about that change. Not surprisingly, a discussion of what virtue looks like in an individual human being is the next step in their investigation. This step in the argument is the subject of Chapter 4.

Before he turns directly to the question of virtue, however, Augustine leads Evodius through a review of these two examples of constitutional change, deducing from them a general understanding of distinction between eternal and temporal law that will be the basis of the positive teaching he offers in the dialogue. However, this crucial step in the argument is not entirely straightforward, especially when we consider that the invocation of eternal law seems to move in a direction completely opposite to what we have discussed so far. We can formulate that problem in this way: no sooner does Augustine indicate to us the radical subservience of law to the common good, along with the necessity of prudence to discern what common good is possible in a given situation, than he reinstates

the supremacy of law—eternal law—in moral and political life, to the apparent exclusion of prudence.

## 6. Distinguishing temporal and eternal law

Augustine begins the next series of deductions or conclusions about written law by observing that the two laws they have just approved (the democratic and the oligarchic-monarchic constitutions) are so opposed to one another that they cannot possibly exist in the same political community (1.6.47, 35-38). And yet, “surely we will not say that either is unjust or least ought to be laid down” (1.6.47, 38-40)? He suggests that they designate such laws as “temporal,” since they may be just, but are not so inviolable that they cannot be justly changed in the course of time (1.6.48, 42-44). This formulation captures the essential character of constitutional law as it has come to light. A constitution is the highest law for a community and receives its justification by its promotion of the common utility or public affairs, and so is just only so long as it fulfills that purpose. It is therefore not absolutely or permanently binding, and may be justly changed as times change, at least if circumstances are favorable to such a course.

Augustine then takes the expected step of contrasting this temporal law with something eternal and permanent. He asks Evodius whether “that law called ‘highest reason’ (*summa ratio*), which must always be obeyed,” can seem to those with understanding to be anything but “unchangeable and eternal” (1.6.48, 46-51). The binding character of reason is obviously not subject to contingency or exception, unlike any human

law.<sup>14</sup> As for the specific workings or commands of this law of reason, Augustine says only that two things happen “through” this law: the bad deserve a wretched life and the good a happy one, and the temporal law is rightly laid down and changed (1.6.48, 47-49). He concludes his description by posing two rhetorical questions that ostensibly cement this law’s universality: “can it ever be unjust that the bad are wretched and the good are happy? or that a moderate and serious people creates its own magistrates, but a dissolute one lacks this license” (1.6.48, 50-54)?

Evodius takes the answers to these two questions to be self-evident, and that “this law is eternal and unchangeable” (1.6.49, 50). However, a difficulty arises if we look more closely at Augustine’s second question in light of the conclusions we reached in the previous section. Is it really true that it is *never* unjust for a dissolute people to lack political power? We saw earlier that Augustine had indicated not only the justice of overturning a democratic constitution in certain circumstances, but also the obligation to look to what is possible before committing oneself to such a revolutionary course (1.6.46, 31). In fact, the justice of the action came to light as inseparable from the prudential calculation of the possibility that it could actually succeed. Barring the emergence of a “good man” who could guarantee success, however, it would appear that the prevailing conditions, though

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<sup>14</sup> This definition of the higher law as *summa ratio* does not reappear—it is replaced by the phrase “eternal law.” It is of interest that Augustine first refers to the “eternal law” in a summary of Evodius’ opinion (1.6.50, 57) and next refers to it as “the law that we discovered was eternal” (1.8.65, 34; emphasis mine). This at least suggests that the understanding of eternal law that is operative in this dialogue owes more to Evodius than to Augustine. Cf. Cicero’s *On the Laws*, where he describes true law (as opposed to civil law) as “the *summa ratio* in nature that commands what must be done and forbids the contrary,” which is “prudence” when perfected in the mind of a human being. He calls this law “a power of nature, the mind and reason of the prudent man, the rule of right and wrong,” or simply “right reason” (1.18-19, 23; cf. 2.7, 11 ).



terrible, has some justified claim to remain in place and deserve, if not reverence, then some kind of respect. In this latter case, even a dissolute people should retain their power.

What we have taken to be Augustine's rhetorical question may therefore not be so rhetorical. The answer to the question whether it is ever unjust for a depraved people to lack the license to create their own magistrates would seem to be *yes*, in cases where no "good man" has yet appeared capable of effecting the massive changes necessary to relieve the dissolute people of their power and replace the constitution. In circumstances short of that, it seems that it would be unjust for them to lack (or, in this case, be deprived of) power. In other words, the common good as a standard appears to lead in certain circumstances to a radical criticism of both existing orders and those orders that might be proposed to replace them (Burns 2012, 197-198).

The fact that Evodius does not raise an objection along these lines, and therefore accepts that this rule suffers no exceptions, probably explains the otherwise strange formulation of Augustine's next statement, which begins "Likewise I judge that *you* see..." (1.6.50, 56; emphasis mine). Augustine here attributes to Evodius the view that there is *nothing* just or legitimate in the temporal law that has not been "derived" from this eternal law (Chroust 1973, 72-73). He describes the view thus: "If at a certain time that people justly gave honors and at another time justly did not, this temporal vicissitude was drawn from that eternity (so that is was just) according to which it is always just for a serious people to give honors and a frivolous one not to give them" (1.6.50, 58-62). Again, in this formulation Augustine fails to repeat the considerable qualification that it would not be just for a frivolous people to lose power to an oligarchic faction that did not know what it was

doing in abandoning the constitution and plunging the country into civil war without achieving an improvement in morals. Augustine therefore gives the impression that changes in human laws proceed through a direct application of universal, eternal precepts, rather than through an application of moral rules accompanied by the judgments of prudence.

We cannot help concluding that in drawing this distinction between the eternal and temporal law Augustine somehow retracts the argument that had been brought to light earlier regarding the relationship between law and the common good. Earlier, the common good appeared to be higher than law in the sense that it was the goal of law and therefore its definitive standard and justification. Here the eternal law is set over the temporal law, which in Evodius' interpretation directly informs through universal precepts any changes in the temporal or constitutional law, without the need for prudential calculation about what actions would best bring about, revive, or preserve the common good as much as possible. The justification for this procedure must be that the precepts of the eternal law—that a good people should create its own magistrates or that a bad people should not—are laws whose effects on the community maximizes the common good. But, if the previous argument is consulted, these rules cannot be themselves sufficient for maximizing whatever common good is able to be secured in a particular situation without the guiding application of prudence that considers the practical possibilities in light of the ultimate standard. Therefore we conclude that the view Augustine has stated in Evodius' name is flawed and partakes of the moral extremism that we saw him attracted to in the first part of the dialogue.

Perhaps we can better find our bearings concerning the eternal law if we look at the summary Augustine gives in his own name in the conclusion of this section. “In order that I may explain briefly the notion of eternal law that has been pressed upon us, as much as I am able,” he says, “it is that [law] according to which it is just that all things be most ordered [*ordinatissima*]” (1.6.51, 64-66). The idea seems to be that this statement relating justice to order is the most general and universal moral rule possible (Chroust 1973, 60-61). It is therefore the common principle or foundation that issues in such statements as “bad people deserve a wretched life and good people a happy one” and “a good people ought to elect its own magistrates and a bad people ought not.” The demand that all things be in an orderly state evidently means that the unjust deserve to be miserable and the good happy and that a virtuous people govern itself while a vicious one not.

The concept of order (*ordo*) is important in Augustine’s thought; he even devoted one of his earliest dialogues to the subject (*On Order*).<sup>15</sup> He later defines order in the *City of God* as the “arrangement of equal and unequal things, assigning to each its own place” (19.13). The concept of order is therefore related to the notion of “fitting” or “appropriate” that Augustine had appealed to in the *Confessions* (3.7.14). The two examples of reasoning according to the eternal law that Augustine presents here relate goodness to happiness (and badness to misery) and moderation, justice and seriousness to political rule (1.7.48, 47-49, 1.7.50, 60-62). The first example would seem to be the principle of God’s rule over the

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<sup>15</sup> For a brief overview of the significance of order to Augustine’s thought generally, see Pacioni 1999 and Van Geest 2014, where it is related to the *taxis* and *kosmos* of Greek philosophy. For an introduction to the concept as applied to his moral thought, see Torchia 1993 and Smith 2015, 113-123. The latter notes that the definition here could have a normative or descriptive meaning (117).

world, while the second seems to be the principle of human political rule (*On Free Choice* 3.9.93 and 3.14.139).<sup>16</sup>

This principle of order is helpful in understanding how the derivation of particular written laws could proceed from some higher, trans-political moral demand, but we come to the same perplexity noted above if we look more closely at the link between the statements “it is just that all things be most ordered” (1.6.51, 66) and “it is never unjust for a moderate and serious people to create its own magistrates, nor for a dissolute one to lack this license” (1.6.49, 52-54). If we apply the same critical spirit that Augustine had earlier in challenging Evodius’ moral opinions, asking *why* it is well-ordered for a good people to have voting rights and a bad people to lack them, the answer must be (according to the argument so far) that such arrangements are productive of the common good, whose deepest element is the cultivation of a virtuous way of life. But pursuing this line of thought led to the radical subordination of any law to the consideration of virtue and the necessity of exercising prudence in judging and justifying political change. It therefore seems that this same subordination would ultimately apply to these commands of the eternal law. Therefore, we are led to the conclusion that the evidence adduced in order to formulate these strict moral rules tends, when pushed, to undermine the absolute strictness of those rules.

## Conclusion

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<sup>16</sup> Augustine relates these two general precepts in at least one other place, where he says that through divine providence “it is as though a natural law were written in the rational soul, so that human beings might preserve images of these distributions [of divine providence] in the intercourse of this life and in earthly mores” (*On Eighty-Three Different Questions*, 53.2).

We have noted in this chapter a divergence between the lesson that Evodius learns from the conversation and the lesson that the author leaves for the reader. While Evodius comes away with the opinion that the eternal law directly governs all changes in temporal law, the reader sees that all temporal law must be justified by the common good, the deepest element of which is virtue and which requires the action of prudence. It is no surprise, then, that the second and third parts of Augustine's positive teaching, where Augustine presents the moral demands of the eternal law and the essential limits of temporal law, constitute teachings about virtue and prudence. It is also no surprise that the arguments that satisfy Evodius turn out to be incomplete and therefore imitations of the true science of virtue and prudence that the argument requires.

The second step of the dialogue's positive teaching begins with a clear change of subject ("*Age nunc...*" [1.7.52, 1]). The new subject is "how a human being is most ordered in himself" (1.7.52, 1-2). The explanation Augustine gives for this turn in the argument is that "a people consists of human beings associated by a single [temporal] law" (1.7.52, 2-3). This gives the impression that the movement from a consideration of law to a consideration of individual human beings is necessary because human beings are the law's "material": the law "associates" human beings, who will then make up a people (see again, 1.6.44, 14-15). It is only natural to think that one cannot understand law without understanding the human beings it rules. However, the argument that we have seen built up over the course of these last two chapters allows us to be more precise about this turn to individual human beings, taken in themselves. The turn to the "ordered human being," while semantically related to the formulation of the eternal law that links justice to order,

is more fundamentally a turn to the question of human virtue. The argument preceding the distinction between the temporal and eternal law made this very clear by elevating the common good as the definitive standard of law, defined ultimately as the practice of a virtuous life. This same movement can be explained in terms of eternal law. If a just law is one that brings about order, which means the just and serious ruling, rather than the wicked and thoughtless, then we have to be able to identify the just and serious; and since justice is defined in terms of order, that means turning to the human being who is ordered within himself.



## **Chapter 4**

### **The Ordered Human Being: Wisdom and the Good Will**

In this chapter we turn to the question of what Augustine has called the “most ordered” human being (1.7.52, 1-2). This is the second and longest part of the investigation concerning the relation between the law of God’s providence and the political law. The first step of that investigation, the subject of the last chapter, was to make a distinction between temporal and eternal law, or between law that is contingently just and law whose moral demands are not subject to contingency (1.6.43, 11: *prius*). The second step is to establish what it means for the order commanded by the eternal law to exist within a single human being (1.7.52, 1: *nunc*). After this Augustine and Evodius return to the subject of the relation between human law and divine providence, and then only at Evodius’ insistence (1.15.103, 32-33). This third step is the subject of Chapter 5.

The investigation of order in the human being is the most difficult section of the dialogue and consists of two parts. The first part is a series of arguments that identifies order with wisdom and identifies free will as the source of disorder. Evodius brings this first part to a close by objecting to God’s punishment of sins committed by “foolish” [*stulti*] human beings (1.1.7.52, 3-1.12.80, 6). The second part is a search for an account of human life that preserves the justice of God’s punishment while accepting that no human being actually begins with wisdom (1.12.81, 7-1.14.102, 31). The focus in this second series of arguments is not so much wisdom as the good will, which is available to all. The central



interpretive question is then the relation between this good will and the ideal of wisdom with which the argument had begun.

This first series of arguments begins by noting the unique human capacity for reason and by posing the question of what way of life deserves to be called truly reasonable. One candidate is the life of domination; this is rejected in the course of argument, however, since those who dominate others are not as impressive as those whose mind dominates them. Augustine and Evodius identify this rule of the mind with wisdom and with true order (1.9.66, 1-2; 1.8.64, 27-28). Here we encounter the problem that this dominion of the mind over every other part of the human being presupposes the existence of some conception, idea, or form that the mind then imposes on the train of desires. In his justification of the mind's rule Augustine refers to two possible standards—the idea of what is high by nature and the idea of happiness (1.8.63, 21-22, 1.8.64, 26-27).

We are prevented from gaining more clarity about this standard due to a sudden turn in the argument, in which Evodius and Augustine determine that vice must be traced not to ignorance, but to individual will and free choice to submit to lust. They rely on the notion of eternal law to make the argument, which grants to the mind both the right and the power to rule, meaning that the explanation for the mind's failure to rule must be the explanation for how the mind fails to use the power it possesses. This failure can be traced only to the mind's willfulness. The position that Augustine and Evodius come to, therefore, is that, while virtue is identical with wisdom, vice is not reducible to ignorance.

However, as we will see, the argument for free will depends on an idea of eternal law, not only as a standard, but as the guarantor of a certain order that facilitates its moral

demands. In the case of the highest powers, this means that the universe is fundamentally lawful and that God would never do injustice. There is therefore a theological assumption behind the argument establishing free will. As we examine the argument further, however, we see that its plausibility comes most of all from its taking up assumptions from our own moral experience of praise and blame, which presumes the sovereignty of judgment over desire and the absence of external impediments to resisting lust. The argument takes up these non-theological assumptions and draws certain consequences from them, including some claim about the design of the universe and the disposition of the highest beings in it. This complicated argument, in which theological questions suddenly intrude upon the conversation, ultimately forces the reader to examine the assumptions and implications of the simple experience of moral praise and blame.

Evodius initially accepts this argument proving moral responsibility, but he soon rebels when Augustine speaks of just punishment for failing to cling to wisdom. He eventually raises two objections to the argument. First, he wonders how we can conceive of someone perfectly wise freely choosing to serve lust (1.11.79, 42-44). Second, and more importantly to Evodius (1.12.80, 1), he raises an objection on behalf of the “foolish,” who have no experience of wisdom and therefore cannot be said to have failed to cling to it (1.12.80, 1-5). Evodius is therefore disturbed by the claim that human beings are sinful because either human beings were perfectly made by God, in which case it does not make sense that they would choose to abandon that happy perfection for the difficulties of mortal life, or they begin as fools, in which case they cannot be held responsible for failing to be wise. Augustine immediately responds to the second, more pressing objection, which

requires that he and Evodius find an account that saves the essential points of the argument—that sin is voluntary and is justly punished—without the assumption that we begin as wise.

This response constitutes the second part of the investigation into human order. The core of Augustine’s argument is that our misery is just, since it is ultimately traceable not to the absence of complete wisdom, but to the absence of what is called the “good will,” which is available to all. Augustine leads Evodius through three separate arguments that build up an account of the character and power of this good will, defined as the will “to live rightly and honorably [*recte et honeste*] and to arrive at the highest wisdom” (1.12.83, 32-33). As the addition of “living rightly and honorably” suggests, in the course of answering Evodius’ objection Augustine also picks up the thread of argument regarding the fundamental criterion for the life of virtuous action. As we will see, the three arguments provide more specificity regarding both of the criteria mentioned in the earlier discussion—the notion of what is high by nature and happiness—and in particular forces us to think about the relation between these two considerations.

I discuss each of the three arguments in detail below, again being careful not to conflate the opinions of Augustine and Evodius. Three difficulties arise in trying to follow these arguments. The first difficulty regards the power of the will itself, which Evodius assumes in the course of the argument to be by definition free. While this view of the will is necessary for the argument, we will see that Augustine indicates quite clearly to the reader the limitations of the will’s sovereignty over itself. The second difficulty regards the power of the good will, which Evodius assumes is itself sufficient not only to provide

“joy,” or a certain satisfaction, but to guarantee a happy life. Again, the argument holds together only by ascribing this power to the good will, but we will see that Augustine quietly distances himself from this assumption at a number of points. Third, and most importantly, there is a difficulty regarding the definition of the good will, which undergoes a quiet but important change over the argument’s course. The connection between the good will and wisdom, the standard and goal articulated in the first part of the discussion of human order, becomes attenuated over the course of the argument and eventually disappears, as the good will is understood simply in terms of what is “correct” (compare the definitions at 1.12.83, 32-33, 1.13.97, 92, and 1.14.102, 29-30). As we will see, this notion of what is correct, or morally upright, as Evodius understands it, has as its foundation a certain conception of moral virtue that owes more to political law than to genuine wisdom. In the end, we have to reckon with the fact that the view of human life and virtue that Augustine articulates on Evodius’ behalf, while conducive to a robust doctrine of natural or eternal law, is flawed.

#### **A. Wisdom and Willfulness**

##### **1. What is at stake: the meaning of human reason**

The section on the ordered human being begins rather abruptly. Augustine asks Evodius “whether it is most certain to you that you live” (1.7.52, 4). Evodius appears to be struck by the question, wondering what question he could answer with greater certainty. Augustine then asks him whether he can distinguish living from knowing that one lives. Strangely, Evodius does not say that he can: he claims that he does not know whether all

living things know that they live, although he of course knows that no one knows that he lives unless he is alive (1.7.52, 5-9). Augustine says that he would know that not all living things know that they live “if, as you believe, you also *knew* that beasts lack reason” (1.7.53, 9-10; emphasis mine). As it is, however, Augustine says that Evodius’ ignorance of this most important point not only prevents them from proceeding in the argument, but “stirs up a long conversation (*sermocinatio*)” (1.7.53, 11-15).<sup>1</sup> This is again surprising, not only because it does not seem that a long conversation is necessary to establish that beasts lack reason, but also because the argument that actually settles the point is quite simple and fewer than twenty lines long (1.7.54, 15-1.7.57, 37).

Augustine begins that argument by observing that we often see beasts tamed or domesticated by human beings, so that “not only the body of the beast, but even its soul is so subjugated to the human being that it serves his will by a certain inclination and habit” (1.7.54, 15-18). He then asks Evodius whether it seems possible that any beast whatsoever would attempt to subjugate a human being in turn, despite the advantages many beasts enjoy in perception and strength (1.7.54, 18-22). Evodius agrees that this is absolutely impossible. Augustine then asks him to account for this difference that they have observed: “what is that thing [*res*] at which the human being excels, such that none of the beasts is able to command him, but he himself is able to command many of them” (1.7.55, 26-27)? He does not pause to leave this up to Evodius, but immediately makes his own suggestion:

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<sup>1</sup> Augustine’s elaborate statement of the importance of this premise—“it is not the sort of thing (*res*) that we can leave aside and still be permitted to proceed to those things we intend with so great a connection of reasoning (*ratio*) as in my opinion there is need” (1.7.53, 13-15)—is strange, considering how simple that premise seems to be. The statement does advertise a certain unity and order in the overall conversation (as directed by Augustine).

“or perhaps this very thing is what is customarily called reason or intelligence” (1.7.55, 27-28)?

Evodius says that he knows of nothing else to call this excellence besides reason (1.7.56, 35), and even presents a rudimentary taxonomy to justify his answer. He says that clearly this excellence must be something specific to the human soul (it cannot be the mere presence of a soul [*anima*], since beasts are also animate beings). There must then be something absent from beasts’ souls that is present in human souls and makes them better<sup>2</sup>, which Evodius cannot think to call anything other than reason (1.7.56, 29-35).

Despite his earlier assertion that Evodius had “stirred up a long conversation” by opening up the question of the difference between living and knowledge of life (1.7.53, 12-13), Augustine now declares that “this question has come to an end” (1.7.57, 37-38). He even reminds us of that earlier statement, confessing now that he had thought “that this question, which, as I understand, has come to an end, would retain us for perhaps as long as all the things that have been said from the beginning of our discussion” (1.7.57, 37-40). This is another odd statement, to which we will return after seeing Augustine’s summation of the argument.

Augustine now “connects” their account of the distinction between living and knowledge of life by securing Evodius’ agreement to a few short statements (1.7.57, 41). First, he offers the definition of knowing as “having something grasped by reason” (*habere perceptum ratione*; cf. 1.3.16, 22), from which he concludes that knowing that one lives is

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<sup>2</sup> It seems important to note the change in formulations from Augustine’s speaking of a particular excellence in human beings (1.7.55, 26) to Evodius’ speaking of “our” being simply “better” (1.7.56, 33). As we will see, this section exposes a tendency in Evodius to confuse domination and true rationality (or true superiority) (Burns 2012, 234).

impossible without reason (1.7.57, 41-44). Then, after pointing out that it is now obvious that beasts live without possessing reason, Augustine tells Evodius that he now knows what he claimed not to know before—that not everything that lives knows that it lives, although everything that knows that it lives must live by definition (1.7.57, 40-1.7.58, 51). Evodius then brings this first section to a close by saying that he has “sufficiently learned” the distinction between living and knowing that one lives and inviting Augustine to proceed to the next stage of the argument (1.7.59, 52-53).

Before taking up that next step, however, we should return to the odd discrepancy between the simplicity of this argument and Augustine’s remarks on the length of the conversation this question evidently requires. The crucial step in the argument establishing the distinction between living and knowing that one lives is obviously that beasts (i.e., non-human animals) lack the reason that is necessary for knowledge, while humans do possess it. This was proven by the example of domestication of animals, where it was obvious that some faculty is present in human beings and lacking in beasts. Augustine had suggested that this could be “what is customarily called reason or understanding,” while Evodius said that it could be “nothing other than reason” (1.7.55, 27-28; 1.7.56, 29; 35). I suggest that Augustine’s odd statements about the length of the required argument indicate a difficulty in their easy identification of the capacity to domesticate with the capacity for reason.

On the face of it, the phenomenon of domestication is a clear instance of human rationality: surely humans could not gain control over animals without the use of reasoning in addition to their physical powers. But, as the Latin text makes clear, domestication (*domare*) is also related to the passion for domination or rule over others (*dominari*). In

fact, very soon Augustine will refer to the irrational human “striving for domination” (*adfectatio dominandi*),<sup>3</sup> which he insists must be *restrained* by reason (1.8.63, 23). Very soon after that, Augustine even returns to the example of domestication to show how the faculties of reason may be present in human beings without ruling: there, animal tamers are cited as an example of “foolish” [*stulti*] human beings whose minds are ultimately ruled by desire (1.9.68, 21-23; 1.9.70, 40-44).<sup>4</sup> I take these textual indications to mean that the distinction between living and knowing that one lives has not been definitely settled by the argument, insofar as the uniquely human tendency to domesticate does not indicate clearly enough what it ultimately means for human beings to possess reason (and therefore for beasts to lack it): domestication may be only an example of “what is *customarily* called reason or understanding” (see again 1.7.55, 27-28; emphasis mine). We are therefore entitled to wonder what else would be included in that “long conversation” that could settle this question decisively.

Unsurprisingly, the next, short step of the argument provides some clarity by taking up a comparison of living and knowing that one lives, and takes the obvious step of elevating the knowledge of life over mere living. In doing so, however, it shows that Evodius (and we) have much to learn about true knowledge and the use of reason. However, I think that Augustine’s clumsy and oddly specific statement that he had thought that this question—the difference between living and knowing that one lives—“might

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<sup>3</sup> This phrase obviously reminds of Augustine’s later, famous formulation of the “lust for rule” (*libido dominandi*) characteristic of the Romans. Burns observes that the two words are used close together for the first time in Augustine’s works (2012, 234n6).

<sup>4</sup> The example of domestication may stand in for all of the productive arts, each of which clearly manifests human reason as applied to various situations and needs. But the productive arts as tools or instruments seem to require regulation by some higher consideration in order to be pursued rationally, apart from whether they “work” in the ordinary sense. I think it is this higher, authoritative use of reason that the author is driving at.



perhaps detain us as long as all the things said from the beginning of our discussion” (1.7.57, 37-40), which comes near the literal midpoint of Book I, suggests that the question might not be properly settled until the end of Book I. If this is true, we have to keep this question of the precise character of human rationality in mind in what remains of their conversation, even if the conversation seems to stray from that theme.

## 2. True knowledge as a way of life

Augustine now asks Evodius whether living or knowing that one lives is more excellent (1.7.59, 54). When Evodius answers with another question—“what do you think, if not knowledge<sup>5</sup> of life?”—Augustine counters with additional questions: “does knowledge of life seem better to you than life itself? Or perhaps you understand that knowledge is a certain superior and purer (*sincerior*) life, since no one is able to know unless he understands [*intellegit*]: but what is it to understand [*intellegere*] except to live clearly and perfectly by the light of the mind itself” (1.7.59, 55-60)? If this is what Evodius means, Augustine continues, then Evodius has not put something else before life, but a better life ahead of a worse one (1.7.59, 60-61).

By attributing this view to Evodius Augustine appears in fact to be offering an alternative opinion. Evodius will accept the attribution, although with the reservation that perhaps knowledge could be bad, in which case it would not constitute a better life (1.6.60, 61-62). The conception of knowledge that Augustine offers here is inseparable from leading one’s life according to the mind’s light, meaning the mind’s own criteria. The

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<sup>5</sup> *scientia* (Gr. *episteme*), from the verb *scire*, one of the verbs translated as “to know.” At some points I will render this by its cognate, “science,” for the sake of clarity.

crucial step is his linking understanding with living “by the light of the mind itself” (1.7.59, 59-60). It is obvious that understanding (literally, intelligence) is measured by adherence to the findings of reason; Augustine’s point here seems to be that true understanding would mean pushing this adherence into all of life, until the knowledge produced by understanding becomes itself a way of life. This seems to be the view behind the somewhat old-fashioned term “man of science”: in the best case, it seems to designate not only a high level of knowledge, but a dedication to the principles of science, i.e., a life dedicated to discovery, with the intention of abiding by that discovery. It therefore does not seem so strange to say that knowledge can constitute a way of life.

We know from Augustine’s answer in his own name to Evodius’ reservation regarding the goodness of knowledge that he thinks this kind of knowledge, or “that which is properly and purely called knowledge,” must not be confused with mere “experience,” which can of course be bad (1.7.60, 65-66). True knowledge, then, is not simply awareness of oneself and of one’s surroundings (for instance, being aware that one is suffering punishments: 1.7.60, 65-66), but something “prepared by reason and intelligence” that therefore can “in no way” be bad (1.7.60, 66-68; 64). Evodius’ uncorrected view of knowledge, in contrast, appears to be simultaneously too high and too low. He is inclined to a “heroic” view that would apparently choose knowledge over life itself, and thus is tempted to separate knowledge from the human motivation for knowledge, which is a better life; and yet he insufficiently distinguishes true knowledge from mere experience.

This step of the argument leaves us with the question of what it would mean for one’s life to be suffused by knowledge and directly guided by the mind’s light. What are

those criteria supplied by the mind itself that ought to illumine our whole course of life? We are prevented from learning more by Evodius' insistence that he accepts the difference between knowledge and mere experience and that Augustine now proceed to what remains (1.7.60, 69). Fortunately, in the next step of the argument Augustine justifies the rule of the mind or reason in the individual, and in doing so gives us some indications about these criteria.

### 3. The rule of mind

#### A. Settling the claims to rule in the soul

Augustine now gives a long speech that clarifies what he himself "wants to say" (1.8.61, 1). He first gives an outline of his position: "Whatever this is, on account of which the human being is put ahead of beasts, whether it is correctly referred to as mind or spirit or both (for we find both in the divine books<sup>6</sup>), if it should rule over and command whatever other things that compose the human being, then the human being is most ordered" (1.8.61, 1-5). As for determining what this ruling perfection must be, Augustine begins by ruling out two classes of qualities. First, he rejects those things human beings have in common with other forms of life, such as nourishment and growth, sense experience, strength and ease of movement, and the perception of pleasure and pain (1.8.61, 5-1.8.62, 18). Second, and more importantly, he rejects things that are particular to human beings but nonetheless are not what is highest in them. He gives as examples of the latter joking and laughing, the

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<sup>6</sup> Augustine appeals to the Bible only to suggest that the specifically human power could be referred to as mind or spirit or some combination of the two, not to introduce a theological premise. The argument remains an exposition of "human nature" (1.8.64, 22), which is understood to be transparent to reason.

love of praise and glory, and the striving for domination (1.8.63, 19-25). The ruling human perfection must therefore be something distinctly good.

We see more clearly now the shortcoming of the first step of the argument (Section 1, above), which too easily conflated the unique capacity of human beings to make other animals serve them with their true excellence. Here Augustine insists that establishing what is genuinely highest in man is not so simple as looking for the “human difference” but must involve some questioning and ranking of the characteristics that distinguish human beings. On what basis, then, does Augustine determine what is genuinely highest, and what therefore ought to rule the rest? He says here that anyone judging correctly “according to human nature” will see that joking and laughing are human indeed, but low or mean (1.8.63, 21-22). As for the desire for praise, glory, and domination, Augustine rejects any idea that the lust for these things can be thought to make human beings better than beasts, since the appetite for these things, when unrestrained by reason, makes people miserable,<sup>7</sup> which no one would claim as a basis for genuine superiority (1.8.64, 25-27).

Here Augustine uses two standards to determine what is highest in human beings: the high or serious by nature (as opposed to low or mean [*infimum*]: 1.8.63, 21-22) and happiness (as opposed to misery [*miserum*]: 1.8.64, 26).<sup>8</sup> His denigration of the comic as low remains simply an assertion, but he does build on the connection between misery and the unrestrained appetite for praise, glory, and domination. The fact that this appetite requires the governance of reason to avoid producing misery means that reason’s rule over

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<sup>7</sup> *miserum*. This is the first appearance of this crucial word, which will be contrasted with happy (*beatum*) later in the discussion.

<sup>8</sup> The relation between these standards—the high by nature and happiness—is explored at various points later in the conversation, particularly in the relation between the praiseworthy and happy life (1.13.94).

such movements of the soul is the condition for a human being's being called ordered, since one aspect of order is better things ruling worse ones (1.8.64, 27-30). Once Evodius agrees to this, Augustine draws the final conclusion: "when reason or mind or spirit reigns over the irrational movements of the soul, that thing clearly rules in the human being to which rule is owed according to the law that we found to be eternal" (1.8.65, 32-34). Evodius says that he understands and follows Augustine's reasoning, although he does not yet summarize their findings, as he had in the previous two steps (1.8.65, 35; cf. 1.7.59, 52 and 1.7.60, 69; 1.10.70; he will complete a summary of this step at 1.10.70, 48-50).

We can summarize the finding of the argument so far by saying that the criterion for order in a human being is the rule of what is genuinely highest in him over whatever else is in him. Unsurprisingly, this turns out to be reason, whose right to rule is justified by its unique capacity to manage appetite or passion and thereby to prevent the misery that is its fruit when unrestrained. The right to rule is therefore inseparable from the fruits of rule: just as the right to rule in the political community turned out to be dependent on each party's contribution to the common good, understood in the deepest sense as the practice of virtue within the community, so the right of reason to rule over the other parts of the soul has turned out to depend on its contribution to the whole human being.

Stated in terms of eternal law, we can say that the rule of reason over the other movements of the soul is granted by the eternal law, which demands in every case what is ordered (1.6.51, 64-67), which means (among other things) the better ruling the worse. This demand for order, which Augustine defines elsewhere as "an arrangement of things equal and unequal assigning to each its own place" (*City of God* 19.13, 11-12), requires a

further point of reference from which what is “higher” and “lower” can be determined within any particular whole: in this argument, that point of reference seems to be human nature (cf. Torchia 1993, 265, 268).

It seems that the view expressed by Augustine here may be clarified as the reverse of the position advanced by Thomas Hobbes, who ultimately conceived of reason as an instrument of desire. In Hobbes’ memorable formulation, “the thoughts are to the desires as scouts and spies to range abroad and find the way to the things desired, all steadiness of the mind’s motion, and all quickness of the same, proceeding from thence” (Hobbes 1996, 52-53). Hobbes therefore might admit that reason is essential to achieve whatever degree of happiness is possible for us, but he denies it a governing or authoritative position: whatever steadiness a man possesses, even his serenity of mind, comes from the order of his desires rather than his reason. One difficulty with Hobbes’ position is that it appears to preclude any rational or moral judgment of the desires themselves, leaving one at the mercy of whatever desire is strongest (Hobbes 1996, 39; cf. however, Strauss 1963, ix, 27-28). In contrast, Augustine says that reason is *superior* to appetite or desire, meaning that it dominates the train of desires, imposing some form on them and bending them toward some end or plan of its own. This suggests that this end or plan must be fundamentally distinguished from desire and must receive its justification from some independent activity of the mind. This is consistent with the previous statement that the prerequisite of true science is “living perfectly and clearly by the light of the mind *itself*” (1.7.59, 59-60; emphasis mine).

Augustine's argument must posit some idea with reference to which a sovereign mind would discriminate among the desires and govern the soul's movements. This again leaves us with the question of criteria we raised at the end of the last section: what are the true criteria for living as revealed by "the light of the mind?" While this step of the argument may not seem to have advanced this point, Augustine's commonsense elevation of mind over appetite has in fact resulted in some specificity on this question. In justifying the mind's rule, Augustine referred explicitly to what is high by nature (1.8.63, 21-22) and implicitly<sup>9</sup> to happiness (1.8.64, 26-27). We can therefore refine our question to asking for the idea of human nature or happiness that provides the model for the mind's rule over desire. Unfortunately the argument does not move directly to a discussion of either human nature or happiness, but rather to the barrier to happiness, which turns out to be willful choice. The theme of happiness does eventually return, however, dominating the discussion of the will that follows this proof. For now, we must turn to the next subsection, which prepares for the proof of free will and in a way summarizes the movement of the argument to this point.

#### B. The wise and the foolish

Augustine now suggests to Evodius that surely a person constituted and ordered in the way they have just described must seem wise (1.9.66, 1-2). Of course, as Augustine points out, the great majority of people are in fact foolish [*stulti*]. As for what defines the foolish person, Evodius says that the argument indicates he must be someone "in whom

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<sup>9</sup> The appeal to happiness is implicit in Augustine's references to misery (1.8.64, 26-27).

the mind does not have the highest power” (1.9.67, 11-12). Augustine then puts an odd question to him, asking whether in such a person the mind is simply absent, or whether it is present but without mastery. Evodius affirms the latter, although he is not sure how this is actually possible. He then asks Augustine to help him understand how the mind could lack mastery (1.9.67, 13-20).

Augustine’s question—whether foolishness is caused by the absence of mind or the weakness of mind—at first may not seem very important. We can better feel its force if we think about the implications of each conception of foolishness for moral responsibility. A conception of foolishness as absent-mindedness would seem to make the foolish akin to beasts, simply lacking the reasoning faculties necessary for deliberation and choice, whereas a conception of foolishness as mental servitude would seem to leave open the question of how the mind’s rule has been frustrated. Evodius seems to sense this, but he has trouble explaining how the mind could persist in a human being without ruling. He therefore turns to Augustine for help. Looking ahead, we see that the next step of their conversation (Section 4, below) is an argument that traces the cause of the mind’s not ruling to individual will and free choice (1.11.76, 11-13). Having some idea of a present but subservient mind thus prepares us for that next step.

Augustine helps Evodius understand this by referring once again to their example of animal handlers and those who domesticate beasts. He reminds Evodius that they had previously discovered that the work of domestication required some kind of excellence, which was said to be reason (1.9.68, 21-30). However, Augustine now takes the example in a different direction and makes explicit what we observed earlier, asking Evodius



whether he believes that those who domesticate beasts must be wise, whom he defines as those “who have been pacified from all subjugation to lust through the mind’s reign” (1.9.69, 33-35). Evodius agrees without hesitation that it would be utterly ridiculous to confuse animal handlers, shepherds, plowmen, and drivers with wise men. Augustine therefore announces that Evodius now has evidence that the mind can be present in human beings, allowing them to do things that require reasoning without being the ruling element in them (i.e., without making them wise) (1.9.70, 40-44). Evodius agrees, and expresses surprise that he did not think of this before (1.9.70, 45-47).<sup>10</sup>

Two things are of interest in these exchanges. The first is Evodius’ frank condescension toward the vulgar farmhands and animal handlers, especially when compared with his attitude in the first discussion of domestication, where he seemed proud of our abilities to turn beasts to our will (1.7.56, 33). His reaction here perhaps indicates a change in disposition as a result of Augustine’s arguments, and underscores the fact that they have passed in their discussion of human order from the domination of other beings to the domination of the mind over the soul.

The second point of interest is Augustine’s definition of wisdom, which he offers emphatically in his own name (1.9.69, 33). In saying that those whom he and the truth consider wise “have been pacified through the subjugation of all lust to the mind’s reign” he continues the line of thought begun earlier: the definitive exercise of reason is not in

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<sup>10</sup> Evodius’ response is interesting here: “It is remarkable that this was already completed by us in the things we discussed before and that it could not come into my mind what I might answer” (1.9.70, 45-47). He alludes to a weakness of mind, which, on the basis of the argument so far, would have to be traced to the dominance of some desire at the mind’s expense. The fact that he had overlooked the deeper unreasonableness of those who domesticate beasts (that is, who use reason for domination over other beings) perhaps suggests a weakness for that particular passion in Evodius himself.

domination, but in living according to the mind's own light, which means that the mind dominates the movements of the soul, breaking the power of lust<sup>11</sup> and thereby bringing peace. The statement is perhaps a gloss on the idea of happiness that was implicitly appealed to earlier: it is something tranquil, undisturbed by wayward desire.

This only serves to raise the question of what distinguishes those lusts that the mind strives to extirpate from the soul. Augustine's earlier statement connecting the lust for praise, glory, or domination to misery suggests that lusts may be defined as those desires that, when indulged, lead to misery (1.8.63, 24; 1.8.64, 25-26). Evodius demands that they "weave together other things," since "it has been discovered that the reign of the human mind is human wisdom and that it is possible for it not to reign" (1.10.70, 1-3). Augustine on his part does not pursue this question of the ultimate standards: rather than pursuing the definition of lust, he turns to the question of the relative strength of the mind and lust. He argues that the mind must be stronger than lust, building up to the conclusion that it only becomes a "companion" to desire by its own will and free choice (1.11.76, 11-13). This is the conclusion prefigured in this section, which ends with an illustration of potential order that is subverted or compromised—not by the mind's exile, but by its being overcome by other forces in the soul.

This turn in the argument thus seems to be a diversion. However, it also appears to have the purpose of heading off a certain possibility opened up by the equation of virtue and knowledge or wisdom, which is that all vice is due to ignorance and is therefore

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<sup>11</sup> It seems then that the mind's reign is the instrument of the pacification, which is identical to the purging of lust from the soul. However, it seems that the purging of lust might be in turn a condition of the mind's rule. This issue is raised by Augustine and Evodius' later discussion concerning the cardinal virtues, which is discussed in Part B below.

blameless. As we will see, this Socratic argument is rejected, albeit by a complicated argument. At the bottom of that argument, however, is the commonsense notion of praise and blame, which presumes that nothing prevents acting wisely except some internal movement that Augustine calls individual will and free choice. This focus on the will prepares the way for a new approach to human order and virtue.

#### 4. The source of foolishness—individual will and free choice

Augustine begins the fourth and most difficult step of the argument by asking Evodius whether he thinks “that lust is more powerful than the mind, to which we know reign over lusts has been granted by the eternal law” (1.10.71, 4-5). Augustine immediately answers his own question in the negative: “I do not think so at all. For it would not be most ordered for less powerful things to command more powerful ones. Therefore I judge it is necessary that the mind be more powerful than desire for the very reason that it rules desire rightly and justly” (1.10.71, 6-9). From this starting point, the conclusion that Augustine eventually reaches is that the mind becomes the “companion” of desire in the case of the foolish only through “its own will and free choice” (1.10.76, 11-13). This conclusion is reached by removing any external impediments to the mind’s rule over our desires, and therefore any external necessity of the mind’s becoming a “companion of desire.” As we will see, this removal is guided by certain deductions from the eternal law, leading to the conclusion that only some movement in the mind itself can account for its failure to rule

desire<sup>12</sup>, a movement that Augustine identifies as “its own will and free choice” (*propria voluntas et liberum arbitrium*: 1.11.76, 12-13).

Augustine’s first premise—that because the mind rightly and justly rules lust it must also be more powerful than lust—determines everything that follows. In making this claim he appears to turn on its head the common phrase “might makes right.” He deduces from the fact that the eternal law grants the mind reign over lusts the further conclusion that the mind is also more powerful than lust. He states the premise that guides that deduction as follows: “it would not have been most ordered for less powerful things to command more powerful ones” (1.10.71, 6-7). In sum, then, command over others apparently requires superior power or capacity, so that the capacity or ability to command must be granted once the right to do so is granted. As Augustine says, the mind is more powerful than desire *for the very reason* that it rules over desire correctly and justly (1.10.71, 8-9; emphasis mine).

This argument at first seems merely absurd or sophistical, since it is surely not our experience that power and right are necessarily joined (Wetzel 1992, 76). To use an important example from earlier in the dialogue, we know that there is no guarantee that a victim of rape or assault will be able to defend himself or herself against an unjust assailant (1.5.33, 13-15). These cases are terrible precisely because a clear right is revealed to be powerless. However, this very example may in fact support Augustine’s move. While we would never blame victims of violent attack for failing to control their external circumstances, including the actions of other people, we certainly do blame people who are

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<sup>12</sup> Augustine seems to use “lust” and “desire” interchangeably at this step of the argument.

not in control of themselves. While we pity the victim for being subject to terrible circumstances, we do not accept that a perpetrator of assault is the unwilling subject of forces beyond his control. Rather, we blame him for allowing his judgment to be overwhelmed by his desire or passion, or for failing to abide by his judgment in the face of strong desire. Insofar as we expect people to be ruled by judgment rather than passion, we also assume that the mind is ultimately more powerful than lust. In other words, moral praise and blame implies that we believe that the mind is capable of governing the passions. Augustine's precise meaning has become clearer: ordinary moral experience implies that the mind's rule over desire is just not only in the sense of correct, but also in the sense of obligatory. Augustine thus takes as his starting point the ordinary opinion that the mind's right over desire is one that can be justly vindicated.

Augustine casts this as a second application of the idea of order consistent with the eternal law. The principle appealed to when the mind's rule was initially attached to the eternal law was that it was inconsistent with order for better things to be subject to worse things. Since the mind is the highest thing in human beings, its rule deserved to be identified with order, and therefore commanded by the eternal law (see again, 1.8.64, 25-1.8.65, 34). Here the principle appealed to is that it is inconsistent with order for less powerful things to command more powerful ones. Augustine surely does not mean by this to justify the rule of the strong over the weak: it does not seem disorderly for stronger people to obey weaker ones, nor, to take an example from the text, does it seem disorderly for human beings to command domesticated beasts, which Augustine has said repeatedly are often much stronger than human beings (1.7.54, 19-22; 1.7.55, 25-26; 1.8.62, 13-14;

1.9.68, 25). Instead, he seems to mean that command, where it exists, comes with some kind of strength. Therefore, if the mind must command or rule desire, it must be more powerful than desire. Its command can be compared to kingly rule, which is exercised over both willing and unwilling subjects and therefore includes both persuasion and force. This indeed seems to be the kind of command that we expect people to have over their desires.

Further light is shed on this initial premise and the relation between power and right if, as Augustine's formulations seem to demand, we compare the mind's position with that of the oligarchic or monarchic revolutionary considered in Chapter 3. In that case, we determined that the revolutionary's right to proceed with his revolution decisively depended on his capacity or power to carry out his design—he had to be “most capable” (or powerful: *plurimum possit*; 1.6.46, 31) in order to proceed justly. In this case, the mind's capacity or power to carry out its design is grounded on its right to do so—the mind rules justly, and so is “more powerful” (*plus possit*) than desire (1.10.71, 8). The case of the revolutionary shows that we would blame someone for undertaking something impossible, even if it were otherwise good, such as the renewal of the common good in degraded political circumstances. No right can be claimed in that case, despite the desirability of the goal. The case of the mind here seems to show that we cannot blame someone for failing to achieve something impossible, or that our blame assumes the possibility of the right. The articulation or vindication of a moral demand implies the

capacity to carry it out. What is common to both examples is the idea that what is truly right or obligatory must be possible.<sup>13</sup>

Augustine proceeds in the argument by translating this conclusion regarding the mind and desire within one human being in such a way that he forecloses the possibility of anything outside the mind impeding its rule over desire without its consent. He takes up vicious souls, bodies, souls that are equally virtuous, and finally natures greater than the virtuous mind.

He first translates the argument to virtue and vice generally, securing Evodius' agreement to the statement that every virtue stands before every vice in such a way that virtue is "firmer and more invincible insofar as it is better and loftier" (1.10.72, 11-13). This leads to the conclusion that no vicious soul overcomes a soul "armed with virtue" (1.10.72, 15-16). This is not objectionable, since virtue is defined in terms of ruling vice: it would be hard to say someone truly possessed virtue if he could not hold out against vice. For instance, it does seem hard to call someone truly courageous who could be "overcome" by a coward and forced to abandon his comrades, or someone truly moderate who is susceptible of being seduced. Of course, we must mean by "overcome" something more specific, since some could be physically restrained from doing what is right or tricked into doing something wrong without incurring blame. It is true that in normal usage we also

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<sup>13</sup> We can see yet more evidence of this close connection if we once more turn back to the original formulation of the mind's right to rule. While Augustine in this argument quickly derives the mind's capacity for rule from its right to do so, we saw earlier that its original right to rule was derived from its preventing the misery that desire would create if left to its own devices (1.8.64, 25-1.8.65, 34; Section 3, above). This was precisely the way that the revolutionary's right was grounded—his revolutionary activity was justified by his capacity to effect through his rule a real improvement in circumstances.

distinguish between vicious actions and being vicious, so that possession of a virtue does not require absolute perfection. However, insofar as we do say someone is more virtuous, we mean that he or she is stronger and more impregnable with respect to vice, so that a soul that was truly virtuous would not be vulnerable to a vicious one.

Augustine next turns to a consideration of bodies. He correctly predicts that Evodius will not deny that “any soul whatsoever is better and stronger than all body,” so that “no body of any kind conquers a soul furnished with virtue” (1.10.72, 18-1.10.73, 25). This seems to mean that no mere body exercises a simply irresistible influence upon a virtuous soul. The argument implies that “soul” and “body” have the same relationship as virtue and vice, meaning that we define soul by its power over body just as we define virtue by its ruling over vice. For when we speak of soul we mean something in us that is not simply reducible to material causes and that exercises a kind of sovereignty over the body. However, defining soul exclusively by its sovereign freedom or indeterminacy gives rise to a difficulty when we consider the implications of Augustine’s extremely expansive formulation that “any soul *whatsoever* is better and stronger than *all* body” (1.10.72, 18-19; emphasis mine). This would seem to mean that all souls, including vicious ones, are by nature impervious to the influence of all bodies. This would mean that every instance of weakness shown by any soul to any body involves the same internal assent. This of course is not consistent with our experience of habituation or addiction, phenomena that clearly complicate moral responsibility. For instance, it does seem in many cases (alcohol or drugs are the most obvious examples) that a “vicious” soul becomes powerless in the



face of “bodies.” This is perhaps why Augustine explicitly attributes this part of the argument to Evodius (see again 1.10.72, 19: *non te arbitror negaturum*).<sup>14</sup>

Next Augustine turns from things below the virtuous soul to things equal to it: “Surely a just soul and mind guarding its own right and command cannot (*num potest*) throw down another mind reigning with equal equity and virtue and subjugate it to lust” (1.10.73, 26-28)? Evodius agrees and gives two reasons that this is impossible: on the one hand, the mind that would subjugate the other would be prevented by the other being of equal strength; on the other hand, it would be prevented by being in fact weaker, insofar as the very attempt would lead that soul to “fall away” from justice and become vicious and therefore weaker than the soul it was trying to corrupt (1.10.73, 29-32). In either case, such a mind would lack the strength to carry out its design.

It is very difficult to form a mental picture of this argument. Evodius’ second argument appears to be a corollary of Augustine’s initial argument: whereas Augustine had said that the mind is stronger than lust because it justly rules it, Evodius now says that a soul that attempts to subjugate another to lust is weaker because it is unjust (compare the uses of *eo ipso* at 1.10.71, 8 and 1.10.73, 31). It seems that the argument makes sense as a repetition of Augustine’s argument regarding virtue and vice. If virtue is defined essentially in terms of resisting vice, then virtue is essentially stronger than vice, and so an otherwise strong soul that tried to seduce a virtuous soul to vice would be by definition

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<sup>14</sup> This turn in the argument foreshadows Evodius’ later inattention to complications regarding the will and moral responsibility, which will be taken up in Part B. It suggests a certain harshness regarding moral responsibility as part of his character.

weaker (i.e., in a weaker position, and therefore unable to exercise an irresistible influence over the virtuous soul).

They then consider the mind's relation to beings that are superior to it. They agree that the only being more excellent than a rational and wise mind is God, but Augustine says that they do not have to consider His existence—"to arrive at an understanding of which is an arduous matter"—in order to deal with the matter at hand (1.10.74, 33-40). It suffices to note, he says, that "whatever that nature is that rightly [*fas*<sup>15</sup>] excels a mind strong in virtue cannot be unjust. Therefore this [nature], even if it has the power, will not compel a mind to serve lust" (1.11.75, 1-4).<sup>16</sup> Augustine does not repeat Evodius' argument that such a being would become weaker in the very attempt to do injustice, thereby rendering it powerless to achieve its intention. Instead, he seems to accept that the highest being in the universe does in fact have the power to compel a mind to vice. He therefore complicates their account and says that one of two things—justice or infirmity—precludes any attempt to force a soul to obey lust. He formulates this quite clearly in the conclusion to this whole line of argument: whatever is equal or superior to a mind that rules and is master of its virtue would refrain from forcing that mind to serve lust on account of its justice, while anything inferior to that mind would be unable to do so on account of its weakness. Therefore, Augustine says, bringing this argument to a close, "no other thing makes the mind a companion of desire than its own will and free choice" (1.11.76, 11-13).

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<sup>15</sup> *Fas* (Greek *themis*) is a difficult word to translate. Its opposite, *nefas*, is the source of the English "nefarious." It has the sense of divine law or sacred duty, even divine will or fate, as opposed to any written law (Lewis and Short, *ad loc.*). Its usage here also has the sense of something that is permitted or proper.

<sup>16</sup> The argument here presupposes that *fas* is the highest principle in the universe. This seems to be an example of what Augustine said earlier, that "to think best of God is the truest beginning of piety" (1.2.12, 23-24; cf. S. Harrison 2006, 83). It would also seem to be an assertion without argument of a solution to the question posed at the beginning of the dialogue—"is God the author of evil?"

It is difficult to evaluate this argument. The proof of free will appears to be no less than an account of all the beings of the universe that precludes any necessity of evil. This became particularly clear in the discussion of whatever being is higher than the rational mind, where Augustine and Evodius assume that the world and the beings that inhabit it are arranged according to the principle of *fas*—some kind of fundamental right or divine law—and therefore refrain from injustice. It turns out that what is genuinely high in the human being has not only the right, but the power to rule and do justice, while what is genuinely high in the universe is dedicated to justice. With power given to the mind or soul, and with the power of higher beings restrained by justice, no failure to rule lust can be attributed to necessity or the order of things. The only explanation left, then, is our own will and free choice (S. Harrison 2006, 67-68).

But what is the ultimate proof for such assertions about the character of man and the world? The whole argument appears to be a series of deductions from the assumption that the rule of mind over desires or lusts is facilitated by the eternal law and the order of things.<sup>17</sup> The picture of the world that emerges appears to be the set of conditions consistent with the mind's right to rule (Wetzel 1992, 61). The evidence that the mind's right to rule over desire has this character is, according to the argument, that it is demanded by the eternal law (1.10.71, 4-5). But the more ordinary reason for this conception of right comes from our ordinary experience of praise and blame: only this conception of right is consistent with our sense that judgment ought to rule desire and that we can justly be

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<sup>17</sup> Consider the argument in Book 3 of *On Free Choice*, where Augustine relates vice [*vitium*] and blame [*vituperation*], on the one hand, and vice and nature, on the other (3.14.135ff.): moral blame implies not only a defect, but a defect from an implied perfection, or nature, that guarantees the possibility of virtue.

blamed for failing to do so. It has come to light that this conception of right, whereby we demand that people resist the charms of bad but attractive people or things and reject the idea that people were simply “born that way” as excuses for judgment giving way to passion, includes a corresponding view of the world where the mind is empowered and the highest beings are themselves restrained by justice.<sup>18</sup>

It seems, then, that the argument for will and choice as the cause of the mind’s being in the service of desire (i.e., foolishness) shows us what has to be the case if the eternal law is like a human or political law—that is, if it makes demands that ought to be followed and justifies punishments for those who fail to adhere to them. If this is so, then surely its demands must be within our power: there can be no necessity that prevents us from carrying them out (Wetzel 1992, 63). Wisdom is therefore within our reach. And if there are no necessities impeding the rule of the mind, then the only explanation for its deviation from rule over desire is something internal to it, which we (drawing on our own experience) call the will, the source of free choice.

We can see the argument best if we think about an alternative view of the mind’s right to rule desire. One alternative would be to grant the desirability and superiority of wisdom without granting that its possibility is in every case facilitated by nature or the order of things, since there will always be some people whose mental capacities are outstripped by their desires. Another alternative is the Socratic view that all vice is due to ignorance, so that the fundamental defect of the vicious is not in their will or intention, but

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<sup>18</sup> S. Harrison characterizes the argument regarding the will in Book I as “something of a study in the self-evident, or rather, a study in the struggle to see the self-evident (2006, 151). Surprisingly, he does not observe the connection between the will’s “self-evidence” and our experience of moral praise and blame that has proven to be crucial in this argument.

in their lack of knowledge or incontinence. This position obviously leaves no place for blame, and therefore for sin.

One might then say that Augustine offers an argument solely from Christian theology. It is true that if evil is not voluntary, as Augustine says elsewhere, repentance, condemnation, admonition, and “the Christian law and all discipline of religion is necessarily borne away” (*On True Religion*, 14.27). However, the argument has implications independent of Christian theology, since a notion of sin or at any rate of voluntary evil is not the province of Christianity alone, but is shared by anyone who engages in moral praise and blame. This notion is reflected in the law of every political community. One of those implications, of course, is that the commonsense view of moral praise and blame includes some theological claim—some view of the highest being and the structure of the world—that leaves room for human freedom.<sup>19</sup>

## 5. Evodius’s objections and a new argument

Now that Evodius has been convinced that it is necessary that the will and choice be responsible for the dominion of desire, Augustine asks him about the consequences of the bad use of these faculties. “It then follows,” he says, “that [the mind] seems to you justly to suffer penalties for so great a sin” (1.11.77, 15). Evodius says he cannot deny this

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<sup>19</sup> The entrance of theology into the argument on the strength of the mind over lust and the argument for moral freedom seems to have a parallel in Cicero’s discussion of natural law, which he presents as following from certain theological claims. In the *Laws*, he asks his Epicurean interlocutor to grant him that “all nature is ruled” by “the immortal gods” before he seeks “the root of right in nature” (1.7.21; 1.6.20). He then proceeds to describe the “certain splendid condition” in which the “supreme god” has placed man (1.7.22). In his review at the beginning of Book 2, prior to the discussion of religious legislation, Cicero presents the highest law as “the mind of god” or “the divine mind” (2.4.8-2.5.11).

conclusion.<sup>20</sup> Augustine then gives a long speech in the form of a rhetorical question, saying that surely this penalty cannot be considered a small one (1.11.77, 18; 1.11.78, 37-38). The long description that Augustine builds up of this punishment, whereby lust comes to dominate the mind and drags it around, despoiled of its virtue (1.11.77, 19), has the effect of drawing out Evodius' reservations about this line of argument.

Augustine groups the effects of lust into two parts, which we could call intellectual and moral. The first result of the rule of lust is a weakness of mind: mistaking the true and false, for example, or failing to be properly skeptical, on the one hand, or properly dogged in one's attachment to true things, on the other (1.11.77, 20-27). The moral penalty is having the soul stirred up by the raging, tyrannical reign of desires that drive it to and fro under the influence of various passions (1.11.78, 27-37). The overall effect is to describe a sort of downward spiral, with the simultaneous weakening of the mind and multiplication of passions (1.11.78, *cum interea*) reinforcing one another and the various unleashed passions that are the result of lust's domination serving in turn to further increase its hold over the soul (consider 1.11.78, 36-37; Burns 2012, 233).

Augustine had begun this part of the argument by putting the conclusion regarding just punishment into Evodius' mouth (1.11.77, 15). He repeats his attribution in the second formulation of his rhetorical question: "Are we able to think of this penalty as nothing that, as you discern, all necessarily endure who do not cling to wisdom" (1.11.78, 37-39)? The elaborate description of the mind's punishment does not move Evodius to change his opinion regarding its justice. He accepts that it is a great punishment indeed, but

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<sup>20</sup> A circle thus develops in the argument—the justice of punishment seems to be at the bottom of the proof for free will, while free will used to justify punishment.

“altogether just, if anyone already settled in the height of wisdom chose to descend from there and to serve lust” (1.11.79, 40-42).<sup>21</sup> Augustine’s speech does, however, draw out two major objections regarding the applicability or relevance of the argument.

Evodius’ first reservation is that “it is uncertain whether there could be anyone who either wanted or wants to do these things”—that is, whether anyone could possibly want (or will) to desert perfect wisdom and serve lust (1.11.79, 42-44). He admits that it is a tenet of the Christian faith that humankind was perfectly established in the happy life and yet chose to forsake it by its own will, but he has yet to understand it. He is not sure that such a “pure” example of wrongdoing is really conceivable (Wetzel 1992, 80, 83). Would anyone willingly endure such a terrible thing after having enjoyed a perfect existence? He is clearly quite moved by his uncertainty on this point, going so far as to say that “if you think that a diligent inquiry into this matter must now be put aside, you do so against my will” (1.11.79, 44-49).

Evodius does not wait for Augustine to respond before expressing another objection, one that he insists moves him even more than the first. “Why do we suffer the harshest penalties of this kind,” he asks, “who certainly are foolish, nor have ever been wise, so that we are said to suffer these things deservedly on account of deserting the fortress of virtue and choosing to serve under lust” (1.12.80, 1-5)? In other words, Evodius

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<sup>21</sup> We should note that, for Evodius, it is enough to have demonstrated the freedom of the action in order to demonstrate the justice of the punishment. However, moral responsibility is not the only consideration in establishing just punishment, since the sentence must also fit the crime. In this case, Evodius has assumed a just correspondence between the magnitude of the sin and the magnitude of the punishment (1.11.77, 15-16). It is perhaps for this reason that Augustine insists on attributing the view articulated at this step to Evodius himself (1.11.77, 15; 38). We will see this same tendency in Evodius in the following arguments, where it enough to prove a connection between misery and the will to convince him that our misery is just. This tendency is perhaps related to Evodius’ harshness regarding situations where moral responsibility may be compromised (note 14, above).

does not see the relevance of the preceding argument to our own case. Surely it would not be just to punish us for failing to abide by a wisdom that we never possessed? The picture of a powerless mind and wayward soul that Augustine has just painted, an image not only of the punishment for a hypothetical mind but of our own fundamental situation, would seem to qualify—if not eliminate—our moral responsibility. He again concludes by insisting that Augustine address this difficulty: “I in no way allow you to put aside laying this open by disputation, if you can” (1.12.80, 5-6).

Evodius’ objections draw our attention yet again to the high level of abstraction in the preceding argument. In the immediate context Augustine will only address Evodius’ second, admittedly greater, concern.<sup>22</sup> He will do so by demonstrating to Evodius’ satisfaction that we justly suffer penalties regardless of our having ever possessed wisdom. After chastising Evodius for “speaking as though you hold it to be clearly discovered that we were never wise,” which he calls “a great question, a great secret, and something to be considered in its place,” he insists that the answer to that question does not bear on “what we have now in our hands” (1.12.81, 7-8; 11-13). That is, Augustine insists that we too suffer penalties justly even if we have never had the experience of choosing to depart from perfect wisdom in order to serve lust. The arguments he adduces for this conclusion are fortunately much less abstract, more evidently drawing on our immediate experience. They also return to the question of what constitutes wisdom in the first place.

### *Review*

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<sup>22</sup> Augustine will take up the first objection in Book III (3.24.240, 1ff.)



Augustine had begun by forcing us to consider the nature of human rationality and true knowledge or science, not as a matter of proposition but as a whole way of life that does full justice to what is highest in man, and therefore deserves the name of wisdom. It seemed, then, that the question of order would require a precise account of how things appear under the light of the mind alone and what standard for living that light reveals (1.7.59, 59-60). Augustine left certain indications about that standard, appealing to what is high by nature and to happiness in his elaboration of the mind's rule, but it never became clear what precisely this life of the mind looks like in action or thought. Instead, the consideration of the justice of the mind's rule over desire led to a proof of will and free choice as the hindrance to wisdom and order, rather than necessity. As we saw, this proof proceeded via deduction, with free will as the last component of an overall view of the world that vindicates a conception of right that corresponds to our ordinary sense of praise and blame.

The movement from wisdom to the will was not entirely smooth, however, since Evodius eventually objected that our lack of wisdom mitigates our moral responsibility, and therefore undermines the justice of our punishment for clinging to lust rather than wisdom. This objection forces Augustine to make a new beginning, taking the will's existence as simply a matter of common sense and articulating for Evodius a view of human life in which the "good will," by which we merely *seek* "to live rightly and honorably and to arrive at the highest wisdom" (1.12.83, 32-33), and which is therefore available to everyone, plays the central role. Fortunately, in elaborating and defining this notion of the good will Augustine and Evodius pick up the thread of the argument concerning the

fundamental criterion of reasonable action, thereby bringing the discussion of the ordered human being to a decisive, if not completely satisfying, conclusion.

## **B. The Good Will and Happiness**

### **1. The first argument—the joy of the good will**

Augustine adduces three arguments to prove to Evodius that we justly suffer penalties for sin. The first argument establishes the justice of human misery by tracing it to the human will, a will that is understood by Evodius to be by definition free (1.12.86, 54-55). The implication, then, is that our misery is something ultimately chosen by us, and therefore deserved (1.12.88, 68; see again 1.1.3, 22-23). While Evodius accepts the argument (1.12.88, 71), there are two points where the argument weakens upon close inspection. The first regards the will's freedom, while the second regards its sufficiency; Augustine explicitly attributes both of these assumptions to Evodius (1.12.86, 53; 1.12.87, 62). We will consider these points after setting forth the course of the argument.

Augustine begins by forcing Evodius to admit that human beings have a will. He even goes so far as to make Evodius' admission a condition of continuing their conversation (1.12.82, 19). Evodius gives in and accepts the proposition, if reluctantly, "that it cannot be denied that we have a will" (1.12.83, 27).<sup>23</sup> It seems that Augustine's approach works by putting Evodius in a position to feel his will at work. When Evodius says he does not know whether he has a will, Augustine asks him whether he wants to

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<sup>23</sup> His command that Augustine "proceed now, and let us see what you bring about from this" (1.12.83, 28) seems to imply that he has simply let the point go without being persuaded.

know this—that is, whether he has a will to know whether he has a will (1.12.82, 15-18).<sup>24</sup> When Evodius claims not to know even this, Augustine threatens to end their conversation.<sup>25</sup> Augustine does more than this dramatic trick, however. He also gives three reasons why he should not continue speaking with Evodius if he denies that he has a will (1.12.82, 21-26). He says first that “I ought not answer you when you ask unless you want to know what you are asking” (1.12.82, 21-22). Nor, he continues, can he have a conversation with Evodius about these matters unless Evodius wants to arrive at wisdom. Third, Evodius cannot be Augustine’s friend unless he wishes him well. To these reasons Augustine adds another for Evodius in particular, telling him to “see in your own case whether you have no will for a happy life of your own” (1.12.82, 25-26). Augustine’s suggests that a denial of the will would be the denial of the ground of serious questioning, conversation, friendship, or concern for one’s happiness, or at least that our will is most evident to us in these experiences.

Augustine’s approach here stands in contrast to the earlier argument concerning the will, where the will and choice appeared as an explanation for the reign of lust at the end of a long deductive argument.<sup>26</sup> We can see from this something of what Simon Harrison has called Augustine’s “way into the will” (S. Harrison 2006). He is struck by the fact that Augustine offers no definition of the will here and does not “lay down a proposition,” but

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<sup>24</sup> The point is not as sharp in translation: in Latin, “will” (*voluntas*) is related to the verb *volo* (“I want”).

<sup>25</sup> S. Harrison compares this argument to a kind of “Augustinian *cogito*”: doubt concerning the will itself indicates a will. He says the argument indicates that to deny the will does away with the condition for learning (2006, 115-116).

<sup>26</sup> These two types of argument concerning the will are present in Augustine’s autobiographical account of his study of the will (*Confessions* 7.3.4-6). He says he first considered the will as a necessary deduction from certain truths about God and the universe, and then considered it as an incontrovertible starting point: as he says, “I knew that I had a will just as [I knew] that I lived” (7.3.5, 18-19). S. Harrison considers this passage, but fails to notice the difference between the two arguments (2006, 72-75).

rather allows an idea to emerge in the course of interrogation, one that “no theory” can overthrow (ibid., 70; 116). I would add only that the idea of will that emerges turns out to be more Evodius’ than Augustine’s. The vagueness<sup>27</sup> with which the argument begins portends a fundamental ambiguity regarding the will that runs through the argument. Despite his reluctance here even to admit his own desire to know whether he has a will, Evodius will later accept without argument Augustine’s formulation of the will as wholly in our power (1.12.86, 54-55), and it is this conception of will that holds the argument together. However, Augustine quietly, but explicitly, maintains his distance from this conception, and even begins to undermine it in the sequel to this argument.

Augustine builds on Evodius’ admission that he has a will by asking him whether he thinks his own particular will is good or bad. Augustine defines the good will as the will “by which we seek to live rightly [*recte*] and honorably [*honeste*]<sup>28</sup> and to arrive at the highest wisdom” (1.12.83, 32-33). Surprisingly, Evodius readily owns that he even now has such a will—that is, that he seeks a right and honorable life and wants vehemently to be wise (1.12.84, 37-38; 1.12.83, 33-35). He does so despite Augustine giving him a chance to demure and simply affirm this definition of the good will (see again 1.12.83, 35-

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<sup>27</sup> The only definition offered of the will in these opening exchanges is that it is something “by which we seek” (1.12.83, 32). By seeming to identify will with strong desire or intention Augustine may even be said to highlight the aspects of willing that humans share with all animals: they too act purposively toward a goal (and can even disguise that goal), have companions, and can be said to seek a kind of happiness. The difference is that our experience of human intention is connected with deliberation and choice, a kind of self-conscious directedness or dedication to high objects (like wisdom, friendship, and virtue) that animals do not appear to experience. This is of course where the conversation goes.

<sup>28</sup> *Recte et honeste*. The latter could also be translated as “noble” or “moral.” Augustine will define living *recte et honeste* in terms of the cardinal virtues of prudence, courage, moderation, and justice (1.13.97, 97-98). This is consistent with Cicero’s *On Invention* 2.159-167, which Augustine simply transcribes at *On Eighty Three Different Questions*, 31. There Cicero says that “the whole force of simple honor” is found in the cardinal virtues, which are sought only for their own sake. The opposite of *honestum*, *turpe*, is usually translated as “base.” According to Cicero, “All honor [*honestas*] in life lies in cherishing duty, and all baseness [*turpitude*] in neglecting it” (*On Duties*, I.4).

36). Augustine then seems to “test” Evodius by asking him whether he thinks this will he has just claimed can be compared with any amount of riches, honors or bodily pleasures. While this is clearly a rhetorical question, Evodius reacts very strongly to the suggestion, asking God “to turn away this criminal madness” (1.12.85, 42).<sup>29</sup>

This step of the argument seems odd at first, since what Augustine proposes to compare with riches, honors, or bodily pleasures is not the *objects* of the good will (again, a right and honorable life and the highest wisdom), but the *will* for—as opposed to the possession of—those things.<sup>30</sup> Evodius therefore says that these lower things, even when possessed, cannot be compared with the dedication to higher ones. This indicates that the “good will,” as the state of soul that seeks these highest things, is in itself a kind of possession, one that Evodius values very highly.

Augustine then suggests that there is for Evodius a kind of satisfaction in the knowledge that he is dedicated to the highest things. “Should it be an occasion for little joy,” he asks, “that we have a certain thing in the soul—this thing I call the good will—in comparison with which those things we have recalled are utterly vile, for gaining which we see the multitude of human being sparing no labors, no dangers” (1.12.85, 43-47)? Again we see that it is the capacity to become attached to right and honorable living and wisdom or the very aspiration for those things that is said to be greater than the pursuits of the vulgar and the cause of joy. Evodius insists that this is indeed cause for the greatest

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<sup>29</sup> This is the only oath of Book I (Evodius swears in similar fashion at 2.18.189). Burns suggests that it indicates a certain weakness on Evodius’ part for those lower goods (2012, 234).

<sup>30</sup> At no point does Evodius ever claim to be an honorable, upright, or wise man himself, although it seems at certain points that such a claim must be implied (e.g., 1.13.98, 102-104).

joy, and immediately accepts the corollary that to lack experience of this joy is the greatest loss (1.12.85, 48; 51).

Augustine now draws a pair of conclusions, each of which he explicitly attributes to Evodius (*vides, ut existimo*: 1.12.86, 52; *tu iudicabis*: 1.12.87, 62). First he suggests that Evodius must see “that it is established in our will that we enjoy or lack this so great and so true a good” (1.12.86, 52-54). It of course must be the case that the joy arising from the good will has its foundation in the will, but Augustine presses further, reasoning that, since “nothing is so situated in our will as the will itself,” a person’s will is alone sufficient to makes itself good, and therefore to experience the joy that attends it (1.12.86, 54-55). As Augustine will soon put it, “although [the good will] is so great a good, there is only need to want it in order to possess it” (1.12.86, 65-66). The second conclusion Augustine draws follows from the good will’s superiority “to all earthly realms and all pleasures of the body” (1.12.86, 56-57). He guesses (correctly) that Evodius will attribute misery to the absence of this good will. While many judge themselves to be miserable when they lose fame, wealth, or bodily goods, Evodius will judge people to be miserable when they lack a good will, including those who abound in such goods (1.12.87, 60-64). Evodius’ assent to these formulations allows Augustine to draw the final conclusion that human beings, even those who were never wise, are afflicted with this misery in accordance with right and merit (1.12.88, 68-70).

The logic of the argument so far is clear: the presence of a good or bad will indicates whether one has or lacks the joy that attends dedication to right and honorable living and wisdom, and this good or bad will is by definition up to us, so that we cannot complain that

the misery resulting from our failure to have a good will is imposed on us unjustly. But are all the steps of the argument so clear? We should revisit the two conclusions Augustine draws in Evodius' name.

The conception of will as self-determined, such that our having a good will appears to be only a matter of some interior nod, certainly gets around the problem caused by our inherited "foolishness"—we may be foolish, but we do have a will that we can turn toward right and honorable living and wisdom and thereby experience joy, rather than misery. This assumption of the will's sovereignty is odd, since Evodius' objection regarding divine punishment for sin was based on the diminished moral responsibility caused by our "foolishness." If we look back at Augustine's description of the penalty for abandoning wisdom, it seems that our "foolishness," a combination of weakness of mind and the dominion of habit and lust, complicates and even frustrates our efforts to impose on the train of desires (see again 1.11.77, 18-1.11.78, 39).<sup>31</sup> And even Augustine's statement here that "nothing is so situated in our will as the will itself" (1.12.86, 54-55) only necessitates that we have *more* power over our will than over other things, not that the will is always and entirely in our control (cf. O'Connell 1970, 58). Augustine's second argument begins by offering, unbeknownst to Evodius, a criticism of this simple view of the will. He does

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<sup>31</sup> But perhaps this objection does not take into account the fact that the good will is simply that "by which we *seek*," rather than attain. And since it is simply an interior dedication to the highest things, rather than perfection, it does not assume complete sovereignty over desire. But granting this, one can still wonder whether such a will is really enough to escape misery. It seems that one could just as easily speak of the misery attending the good will, insofar as it is something distinguished from *actually* living honorably and attaining wisdom. It seems that the knowledge of one's dedication to the good without possessing it, and therefore of having the longing without the object of longing, could be a source of unhappiness, rather than joy. The next argument leaves this problem behind by positing that someone *really* has a good will and has obtained the fruits of this good will—the cardinal virtues.

so by asking what it *really* means to have a will directed toward right living and wisdom and by indicating to the reader the role of habit in determining our will.

But even if we grant this freedom to the will, the great weight that Evodius places on the will raises another question. It is clear that Evodius agrees he will judge those with a bad will to be miserable, even if they are rich and secure (1.12.87, 62-64). Augustine first presents this judgment to him as an addendum to the thought that misery can be caused by the loss of bodily goods (1.12.87, 60-62), and therefore it seems simply to be a corrective consistent with common sense: one can be made miserable not only by misfortune, but by a bad character. But the conclusion that Evodius draws from this thought—that human beings are miserable according to right and merit, even if they were never wise (1.12.88, 68-70)—implies a more radical interpretation. In order to maintain a strict relation between misery and right or merit, Evodius must ultimately repudiate the statement that misfortune is a cause of misery independent of a bad will. He also must affirm the corollary that the good will suffices to escape misery, meaning that dedication to the highest things is sufficient to make up for the loss of any goods of fortune.<sup>32</sup> The implications of Evodius' argument are therefore very harsh, since, on this account, the only reason anyone is miserable is insufficient dedication to honor, rectitude, and wisdom: if they were so dedicated, they would be raised by joy out of their misery. This thought is elaborated on

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<sup>32</sup> This reminds us of Evodius' "heroic" view of science earlier, which he insisted he would prefer to life itself (1.7.59, 55-56). The examples of blameless Job, or of the just Priam testify to the superficiality of Evodius' position, who seems compelled to "defend a thesis" here (*Nicomachean Ethics* 1096a1-2). Wetzel unaccountably denies that Augustine would ever, like Aristotle, "contaminate beatitude with fortune" (1992, 50), but Augustine's distancing himself from "Evodius'" argument here indicates an agreement with Aristotle.



in the second argument, where true dedication to the good will by itself guarantees happiness.

This first argument is effective in answering Evodius' objection because it draws out his opinion that there is something short of complete wisdom that offers a foothold against misery. This foothold is a moral quality that we possess or lack by choice. Even if we are born into foolishness and are subject to turpitude, we retain the power to dedicate ourselves to living with honor and rectitude and striking out on the path to wisdom. The knowledge that our will at least is good, even if we are not yet good, and that we are therefore on the way, is a source of joy or satisfaction. Because the argument proceeds as a drawing out of Evodius' own opinions, it is perhaps helpful to state it in narrative form: "I have a good will, since I know that I want to live an honorable and upright life that ends in wisdom. I derive great satisfaction from this dedication, which I would not trade for any of the perishable goods that most people strive after, since a life without this satisfaction would be utter misery. We may be foolish and miserable, but there is a means at our disposal to escape it—we can turn our efforts to an upright and honorable, and eventually wise, life. So our misery is self-inflicted, since we can always start to do the right thing and take delight in it."

## 2. Augustine's second argument—virtue and happiness

Augustine gives no explanation for why he suddenly adduces a second, much longer argument. The argument would seem to be unnecessary, since the first apparently answers Evodius' objection to his satisfaction. The outline of the argument is even

reminiscent of the first: a true lover of the good will possesses the four cardinal moral virtues of prudence, courage, moderation, and justice (1.13.89, 1-1.13.93, 56); he therefore leads a praiseworthy and happy life, while someone of the opposite will leads a base and miserable one (1.13.94, 57-1.13.95, 83); we are therefore happy or miserable due to our will, which ultimately determines whether our life is praiseworthy or base. It does constitute an improvement over the first argument in that it brings out Evodius' opinions and expectations in a more dramatic way. Whereas the first argument had referred only to "living correctly and honorably," this argument speaks in some detail of the cardinal virtues, and whereas the first argument had spoken of the misery of the bad will, this argument speaks of the happiness of the good will. The argument is also an improvement regarding the sovereign freedom and the sufficiency of the will, the two major weaknesses we noted in first argument. The discussion of the virtues complicates the notion of the will's freedom, while the discussion of the praiseworthy life and happiness presents more clearly the problem of the will's sufficiency.

The first step of the argument, the "discovery" of the cardinal virtues in the person of good will, is crucial. It obviously advances the argument by providing more specific grounds for praising the life of such a person,<sup>33</sup> but it also includes a subtle criticism of the preceding argument. They begin by defining the virtues: prudence as "the science of what is to be sought or avoided"; courage as "the disposition of soul by which we scorn all inconveniences and losses of things beyond our control"; moderation as "the disposition

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<sup>33</sup> For the definition of *honestum* in terms of the cardinal virtues, see *On Eighty-Three Different Questions* 31.1, 2-4; the whole *quaestio* is simply copied from Cicero's *On Invention* 2.159-167. For other references in Cicero, see *On Duties* 1.5.15, *To Herennius* 3.3, *On the Definitions of Good and Bad* 5.21.58-59.

that coerces and restrains the appetite from those things that are sought basely”; and justice as “the virtue by which his own things are assigned to each” (1.13.89, 1-14). Augustine then conjures an image of the person truly dedicated to the good will that emphasizes the disparity between the weight that the good will has borne in the argument and its vagueness:

Surely we cannot doubt that anyone who, having a good will, the excellence of which we have now long discussed, should embrace this one (will) than which he has nothing better for the time being, should delight himself in it, then should enjoy it and rejoice, considering it and judging how great it is and how it cannot be snatched away or stolen from him against his will, sets himself against all the things that are inimical to this one good (1.13.90, 15-21)?

In this overwrought description any concrete manifestations of the good will are obscured by an image of someone beholding the greatness of his will in a kind of ecstasy, or in the way someone might behold a precious artifact. This scene of intense dedication raises the simple question of what we could actually expect from someone with such devotion.

The answer to this question is the cardinal virtues. As Augustine says, surely the person of truly good will is opposed to everything that is incompatible with it. But this means that he is endowed with prudence, since he sees what must be sought and avoided (1.13.91, 23-24). Evodius agrees that he could not do this (that is, he could not *see*) without prudence (1.13.91, 25-26). The same procedure is followed for the other three virtues: surely the person of good will cannot love or value goods of fortune, which means he “is not pained to lose them and utterly scorns them,” and so possesses courage (1.13.91, 28-29; 31-33; 37-38); surely he resists and opposes lusts in every way, and so possesses moderation, the virtue that “coerces” lust (1.13.92, 39-44); and surely he cannot wish ill on

anyone, which means he does no one injury, which means in turn always giving to each his own, and so he possesses justice (1.13.93, 47-52).

Evodius draws from this specification of what exactly constitutes the good will (the possession of the cardinal virtues; Van Riel 2007, 274) the praiseworthy and noble character of the life of good will (1.13.94, 57-59).<sup>34</sup> Before following that chain of argument, we should note two major difficulties. First, the definitions of prudence, courage, and moderation are circular with respect to the good will (Burns 2012, 244-245). The person of good will possesses prudence, meaning that he knows what to seek and avoid; but the only indication given of what prudence actually sees is that the good will is to be sought and the contrary avoided (1.13.91, 23-24; 1.13.89, 1-2). The person of good will possesses courage, which is defined in terms of not loving or valuing highly goods of fortune, which are by definition loved with a bad will (1.13.91, 28-31; 1.13.89, 4-6). To be a person of good will is to be moderate, which means restraining the appetite “from those things that are sought basely,” which is equivalent to restraining lust, which is defined as what is wicked according to the good will (1.13.89, 8-9; 1.13.92, 40-41). The exception to this circularity is the virtue of justice, which is possessed by the person of good will and defined simply as “giving to each his own” (1.13.93, 49-50; 1.13.90, 12-13). The specificity regarding the good will that the discussion of the cardinal virtues promised is thus limited to this phrase.

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<sup>34</sup> There is no indication here that the person of good will is wise. Three possibilities seem possible: the cardinal virtues themselves constitute wisdom, the cardinal virtues lead to wisdom, or, as is implied in the beginning of the next argument, wisdom has been replaced by a certain conception of the cardinal virtues.

A second difficulty regards the precise causal relation between the good will and the moral virtues. At first, it seems that this consideration of the virtues is meant to answer the question of what qualities the person will come to possess who truly dedicates himself to the highest things, meaning that he consistently regards his own good will as the fundamental consideration. However, closer inspection indicates the possibility that the consideration is meant to reveal what qualities must be possessed in order to have a good will in the first place (Van Riel 2007, 271, 274). This is most obvious in the case of prudence. Augustine says that the person of true good will seeks his good will above all and therefore opposes everything contrary to it (1.13.90, 20-21). Someone who sees that the good will must be sought and everything opposite avoided, must be endowed with prudence (1.13.91, 23-24). He therefore indicates a two-step process of seeing, and then seeking or opposing, in which the good will comes into sight as the highest aspiration, and is then pursued. Prudence, then, becomes the answer for how precisely the good will appears as the ultimate goal. This means that not only does someone of good will come to possess prudence, but that prudence is necessary for the attainment of the good will.<sup>35</sup>

This fundamental situation obtains in the other virtues as well. With respect to courage, the fact that the lover of the good will “is not pained to lose [goods of fortune] and utterly scorns them, which was said and granted to be the work of courage” (1.13.91, 31-33) admits of two interpretations. Either courage is the name for a consequence of the true good will, or it is an explanation for how the person of good will came to scorn other

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<sup>35</sup> C. Harrison comes close to this interpretation when she says the virtues are a means for the will “to preserve itself” (2006, 209), which implies that they are something other than the will itself. I add that they may also be means for the will to become good.

goods he once loved and to attach himself to attaining a good will. The situation is the same regarding moderation. The statement that the lover of his own good will is opposed to lusts in every way, “and for this reason is rightly called moderate” (1.13.92, 43-44) means either that the actions of moderation necessarily result from his good will, or that the virtue of moderation, defined as the strength to hold the appetite back from desires other than the good will, a necessary precondition for the cultivation of the good will itself. As for justice, the fact that it is “absolutely impossible” to avoid injuring others without “giving to each his own,” which “pertains to justice” (1.13.93, 47-51), may mean only that we must assign justice to the person of good will, but it also seems to indicate that the virtue of justice is a necessary precondition of the good will.

This question regarding the relationship between the good will and the moral virtues complicates Augustine and Evodius’ account, which has hung together by connecting happiness or misery to a good or bad will that is wholly in our power. It has made us consider the ways that our will is the product of our virtues and vices, and therefore not immediately in our power. If this is so, and the cardinal virtues are not only consequences or markers of our good will, but also its preconditions,<sup>36</sup> we are led to the question of their origin. Is it simply in our will or free choice, or must we also look to habit, native character, or education? The more we incline to the latter, the more circuitous the path to the good will becomes, if it is not lost altogether.<sup>37</sup> Evodius does not show any

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<sup>36</sup> To say that the cardinal virtues are the preconditions of our good will is to say that, if we are ourselves to possess a good will, we need clear sight of it, scorn for any losses we may have to suffer in order to possess it, resistance to other goods that may substitute for it, and be able to give to each his own. In other words, we require various qualities of soul, especially if, as the argument presupposes, we begin as foolish human beings for whom the good will must first be an object of aspiration.

<sup>37</sup> Again, review Augustine’s description of the mind that is punished for choosing to serve lust (1.11.77, 18-1.11.78, 39), where ignorance and lust combine to shackle the soul. Can we rise from this to the cardinal

signs of being troubled by this, nor does Augustine seem eager to point it out: rather, Evodius takes the satisfying conclusion—the exemplary character of the man of good will—and leaves aside the perplexity regarding the attainment of the good will.

Again, despite his indications of these difficulties, Augustine now brings the argument to a familiar conclusion by a series of small steps. He first suggests that the life of the person of good will, who has just been discovered to possess the cardinal virtues, is praiseworthy (1.13.94, 57-58). He then leads Evodius to the conclusion that his life must also be happy (1.13.94, 66; 71-72). From this identification of the good will, a praiseworthy life, and happiness, Augustine draws for Evodius the corollary that the person of contrary will (i.e., a bad will) will be miserable (1.13.95, 81-82). They have therefore established that it is due to the will that we deserve and pass a praiseworthy and happy or a base and miserable life, even if we were never wise (1.13.96, 84-89). This seems altogether just to Evodius.

Augustine has once again dissolved Evodius' objection to our being punished for sin despite never being wise ourselves, and therefore never seeming to have the clear choice between the rule of the mind and the rule of desire. According to the argument, we still have a will at our disposal, whose good or bad state determines whether we possess the virtues or vices that eventually determine the rank and happiness of our lives. The conclusion is essentially the same as the first argument, although it is reached by a longer road: the joy that attends the dedication to right and honorable living and wisdom has become the happiness that attends a praiseworthy life, whose foundation is the cardinal virtues that result from that dedication. The road may appear harder and longer, but the

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virtues by force of will alone? It is interesting that Evodius' initial objection was that our responsibility is diminished by our foolishness, and so our punishment is not just. He seems to have forgotten that now.

reward is also greater, and it is still within our reach. It is clear that the two assumptions from the first argument regarding the will's freedom and sufficiency also form the backbone of this second argument. We discussed the will's freedom above in treating the discussion of the virtues, and now we should turn to the question of the will's sufficiency, which Augustine draws to the reader's attention by a leap at a crucial part of the argument.

Augustine had gotten Evodius to admit that he thinks a miserable life must be avoided and that a praiseworthy one must be sought (1.13.94, 60-65). From this, he had drawn the conclusion that the praiseworthy life is not miserable (1.13.94, 66-67). The alternative, that the praiseworthy life is miserable, would of course mean that the praiseworthy life must be both sought (as praiseworthy) and avoided (as miserable), and so Evodius readily agreed to the conclusion. However, there seems to be a leap in the argument here, since it does not seem strictly necessary that our desires for what is admirable and for what will make us happy will always converge. In fact, much of our experience with admirable or noble action suggests otherwise, since many people whom we admire have undertaken great and unrewarded sacrifices to do the right or honorable thing. If we go back to the cardinal virtues that define the praiseworthy life, this seems most obvious in the case of courageous action. It is almost certainly for this reason that Augustine casts the conclusion the way he does: "It is *pleasing* (i.e., satisfying: *placet*; cf. 1.6.42, 1), therefore, that the lover of his good will and the scorner of any other so-called good, which can be lost even while the will for it remains, be a happy human being" (1.13.95, 71-72; emphasis mine).<sup>38</sup> To say that something is *pleasing* is distinguished from

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<sup>38</sup> The grammar of the sentence renders the mood of Augustine's statement ambiguous: because *placet* is used impersonally, and therefore introduces an indirect statement, it is uncertain whether the "to be" was



saying that it is simply true. In fact, one reason it might be especially pleasing or satisfying for the devotee of the good will to be happy is that it is not our experience that that true virtue is universally rewarded.

This is an important and revealing slip in the argument. In the first place it shows that Evodius clearly longs for a life that is both admirable and happy<sup>39</sup>, and has a strong hope or confidence that those two desires somehow converge. This is not strange; it merely corresponds to our sense that goodness and happiness belong together (cf. 1.14.100, 15). However, as we noted in the first argument regarding the sufficiency of the good will, it does seem that the view Evodius accepts requires denying external goods or fortune any role in determining one's happiness. This, however, would seem to require attributing all misery to moral baseness and insisting on the happiness of good people amid great misfortune, at least if we confine ourselves (as Augustine and Evodius do) to this world. Instead, we must admit that our desire for such a convergence is not always justified by events. It seems that one must be good to be happy, so that the good will is necessary for happiness and the bad will leads to misery, but this does not mean that seeking what is admirable will in every case lead to happiness, so long as we understand good fortune to be a part of happiness (contrast Wetzel, who presents the early Augustine as unaware of this problem (1992, 67-68, 71-72)

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originally indicative or subjunctive. That is, it is uncertain whether it is pleasing that the lover of his good will *is* happy, or that it is pleasing that the lover of his good will *would be* happy. The first version seems more compatible the sentiment that what is satisfying is the direct relation between the good will and happiness, while the second version is more compatible with the sentiment that it is especially satisfying to see praiseworthy people meet with happiness, although this is not necessarily the case.

<sup>39</sup> In fact, Evodius uses his strongest language regarding the happy life, rather than the praiseworthy one: concerning misery, he says "heartily indeed do I judge and reckon that no other thing must be sought for" than fleeing it (1.13.94, 62-63).

It would seem that the true link between goodness and happiness would be divine providence and the judgment of the next life, but this is at most implied by the argument, since neither Augustine nor Evodius appeals to it. Absent this appeal, it seems that Evodius must say that the good will is not only possible in this life, but guarantees happiness. This guarantee necessitates denying that anything external to the good will determines one's happiness. Augustine and Cicero both attribute this position to the Stoics. Cicero attacks it in the name of the Peripatetics (i.e., Aristotelians) and the Socratic school more generally, who taught that virtue and external goods were required for happiness (*On the Definitions of Good and Bad* 4.2-3, 78-79; 5.77; *Laws* 1.13.38, 21.55-56). Augustine mocks the Stoics in the *City of God* for being compelled to deny that torments are really torments in order to maintain their position (19.4, 105-117). Augustine's distancing himself from the Stoical implications of the argument here (which, it must be said, are not explicitly acknowledged by Evodius, but only follow from things he has explicitly said), as he had in the first argument (recall 1.12.86, 52, *vides*; 1.12.87, 62, *tu*), is consistent with this later criticism.

In conclusion, while the form of the second argument is much the same as the first, with the will established as the grounds of merit, and thus the good or bad will determining happiness or misery in a way that cannot be objected to on the grounds of justice, Augustine has added a few wrinkles to the argument. While the will remains the locus of worth, the ground of worth—the good will—has become complicated by the discussion of the moral virtues. As a result, relying (as Evodius does) on a parsimonious definition of the will as the faculty of choice, or the faculty by which we choose to be good or bad, appears to be misleading. This surely casts a shadow on the argument's conclusion that being happy,

since it depends on our good will and praiseworthy character, is as simple as wanting it (1.13.96, 85-86). While it is surely encouraging to discover that our goodness and happiness lies in our hands, since we can determine whether we possess the virtues that make us good and happy, it is sobering to discover that our task is to purify our will by cultivating and acquiring the cardinal virtues in order to attain the truly good will that promises happiness (cf. Wetzel 1992, 87. Augustine delivers a version of this more sober truth in the third argument.

As for happiness itself, the elaboration provided by the second argument has strengthened our suspicion regarding the sufficiency of the good will, whether to escape misery or to provide happiness. However, it has also resumed the thread of argument regarding the criterion used by the mind in ruling. That argument had left off with references to what is high according to human nature and to happiness (1.8.63, 22; 1.8.64, 26) before being interrupted by the argument regarding free will and moral responsibility. With happiness under discussion again, we are in a position to say what we have learned about this idea in the meantime. Thus far, we know that it is connected, in Evodius' mind, to a praiseworthy life, which is itself gained by possession of the four cardinal virtues, each of which is an instantiation of "right and honorable living" and (perhaps) wisdom. It seems natural to connect the notion of correct and honorable living to what is high or serious according to human nature, the opposite of what is laughable (1.8.63, 20). Filling out the idea of happiness by saying it is a consequence of rectitude and honor and the cardinal virtues (in sum, a praiseworthy life) is an improvement in specificity, but how are these

concepts themselves to be understood? Unsurprisingly, the third argument begins with this very question, and indicates a defect in Evodius' understanding of them.

Again, it may be helpful to put this second argument in narrative form: "I know that someone who really values his good will and puts it before everything else will, in time, come to possess the four cardinal virtues. Surely someone whose life is ornamented by these virtues would deserve the highest praise, and would also be truly happy. Putting anything else ahead of being good naturally leads to a base and miserable life, and not unjustly, since it is ultimately a consequence of a bad will. But this misery is never final or tragic, since there is always the possibility of striving for and eventually attaining a praiseworthy life that leads to happiness."

### 3. "Another thing"—becoming worthy of happiness

Augustine now suddenly adds "another thing" to these two arguments (1.13.97, 90). This additional argument again appears to be unnecessary, since the first two arguments relieved Evodius of his difficulty regarding the penalties for sin (1.12.88, 71; 1.13.96, 88-89; cf. 1.12.80, 1-6). As in the case of the second argument, here too Augustine begins by alerting the reader to an error in the prior argument. He does so using one of his favorite tactics—putting words into Evodius' mouth. He says he "believes" that Evodius will recall that the definition of the good will was that "by which we seek to live rightly and honorably" (1.13.97, 90-92). Evodius says that he does indeed remember this (1.13.97, 93). However, this is not in fact the original definition of the good will, which was that "by which we seek to live rightly and honorably *and arrive at the highest wisdom*"

(1.13.83, 32-33: emphasis mine). While Evodius does not notice this, it is clear to the reader that he has not in fact recalled the definition correctly (Burns 2012, 236; cf. S. Harrison 2006, 119-120, C. Harrison, 2006, 209, Torchia 1990, 10, Van Riel 2007, 256, and O'Connell 1970, 59, where this crucial difference is not observed).

Evodius' lapse of memory suggests that he has retained the precept to live rightly and honorably at the expense of wisdom, which was said to be the ultimate goal of action in the earlier discussion of the ordered human being (1.9.66, 36-37 and context). This orientation is retained, albeit in amended form, in the original definition of the good will: while the good will is understood to be something short of wisdom, its goodness ultimately derives from its aiming at wisdom (1.13.83, 32-33). The original definition of the good will assumes that honorable and upright living is a sure sign of progress towards wisdom, but now we wonder whether the necessity of wisdom has been bypassed altogether. If we look back at the second argument, we see a possible turn in the discussion of the virtues, where the four cardinal virtues are used to demonstrate the merit of the good will that is the foundation of happiness. According to the earlier arguments, only the complete rule of the mind, or wisdom, could guarantee happiness (see again 1.8.61, 1-5; 1.8.64, 25-28, 32-33, 37; 1.8.69, 33-35). This would not be a problem if the cardinal virtues were understood to constitute wisdom, but it seems from Evodius' lapse of memory that he is inclined to understand them in some other way, independent of wisdom. He therefore seems to understand them as strictly moral virtues, defined simply by what is right and honorable. We will return to this point at the end of the argument and raise the question whether there

is something defective in it from the point of view of wisdom. For now, this revelation is cause for suspicion as the argument proceeds, based as it is on this faulty definition.

Augustine's second purpose in this argument is to review, with Evodius' approval, the account that follows from this (truncated) definition of the good will. He repeats the finding concerning the moral virtues, saying that their argument has taught that loving and embracing the good will above goods of fortune leads to the possession of those virtues that together define living rightly and honorably (1.13.97, 94-98). From this, he continues, it happens that whoever wants to live rightly and honorably more than he wants fleeting goods "attains so great a thing with such great ease, that it is nothing else for him to have what he wants than for himself to want it" (1.13.97, 98-101). This brings forth a very strong reaction from Evodius, who says that "I can scarcely contain myself from shouting for joy, since so great and so easily constituted a good has suddenly appeared to me" (1.13.98, 102-104)!<sup>40</sup> Augustine takes his exclamation as an opportunity to connect their account of joy and happiness, saying that "this very joy that is produced by the attainment of this good, when it tranquilly, quietly, and constantly excites the soul, is called the happy life," since to live happily is "to rejoice in true and certain goods" (1.13.98, 105-108).

Augustine's review thus buries the complication that we observed with the moral virtues in the second argument, depicting them only as a consequence or result of dedication to the good will and ignoring the suggestion that certain virtues might be

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<sup>40</sup> Evodius' outburst of enthusiasm is difficult to interpret. He had earlier claimed to have a good will at that very moment (1.12.84, 37-38, *iam*), and it is unclear whether his opinion changed once they determined that the person of consistent good will would possess the four cardinal virtues, and thereby become praiseworthy and happy. I doubt that Evodius would claim to be virtuous and happy now, and so I am inclined to the view that what has "suddenly" appeared to him is the guarantee that his desire for goodness will transform, in time, into virtue and happiness, rather than a realization that he is in fact perfectly good.

necessary for the process of purifying our bad will.<sup>41</sup> In fact, he brings the simplified account of the will to its rhetorical height in the formulation of the good will as something equally great and easy. These adjectives correspond to the will's sufficiency and its sovereign freedom: the good will must be so great that it alone determines our happiness or misery, and it must be ever within our reach if we are to be justly punished for failing to stick to it. In the end, Evodius' reservations regarding human "foolishness" and misery, which he had taken to be objections to God's justice (1.12.80, 1-5), are overtaken by his enthusiasm for the prospects offered by his will, something that is fundamentally up to him and that, when good, is sufficient for happiness. His notion of this will, and his expectations for the good will, lead him to accept the argument that there is no cause outside our will that prevents our escaping misery.

Having stirred up Evodius' enthusiasm with this summary, Augustine now turns to his third purpose, which is to raise a perplexity regarding their account and propose a resolution. By doing so he clarifies their account, both to Evodius and to the reader. He asks Evodius whether each human being wants and selects a happy life, to which Evodius responds with incredulity—"who doubts that every human being wants [it]" (1.14.99, 1-3; cf. 1.13.94, 62-63)? Augustine then raises the problem that, according to the review of the argument, which established a direct relationship between the will and happiness, everyone should then be happy. As it is, the great disparity between the universal desire for

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<sup>41</sup> Augustine may in fact subtly distance himself from this summary concerning the virtues by the addition of "as the argument has taught" (1.13.97, 97). We have noted above the times that Augustine distanced himself from the argument that he summarizes here. The particular reason for this addition may be the word "consequently," at least if we are right about the problems raised in the earlier argument regarding the causal relation between the good will and the virtues.

happiness and the few who are actually happy makes it difficult to say that people really suffer misery or obtain happiness willingly (1.14.99, 4-6; 1.14.100, 9-12).

Augustine does not wait for Evodius to respond to the difficulty before offering a proposal. He suggests for Evodius a distinction between “wishing well or ill [*velle bene aut male*]” and “deserving something through a good or bad will” (1.14.100, 13-14). He explains that “those who are happy, who ought also be good,<sup>42</sup> are not happy because they wanted to live *happily*—for even the wicked want this—but *rightly*, which the wicked do not want (1.14.100, 14-17: emphasis mine). Happiness is therefore ultimately the “companion” of living rightly<sup>43</sup>, which renders us “worthy” of happiness, and so the will for a happy life is useless apart from the will to live rightly (1.14.101, 19-21). In the end, Augustine suggests that the miserable are such not because they want to be miserable, but because “they are in that will that misery necessarily follows, even against their will” (1.14.102, 26-27).

Augustine seems to clarify and save their argument by doing for Evodius something akin to what he did for the reader earlier in the discussion of the cardinal virtues. There he complicated the *ease* of attaining a good will by suggesting the will was a composition of virtues and vices. Here he proposes that the path to happiness through the good will runs exclusively through the will to live rightly, rather than simply happily, and presents the good will as something more difficult—the good will is a state one must be “in,” rather

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<sup>42</sup> The verb translated as “ought” (*oportet*) carries the sense of propriety: it can be contrasted both with what is merely permitted and with what is strictly necessary (Lewis and Short, *ad loc.*). This is the same impersonal construction used with the verb *placet* in the previous argument (p. \_, n. \_, above), and is thus also ambiguous in mood.

<sup>43</sup> O’Connell strangely says the opposite, that virtue is the companion of happiness (1970, 64)



than a merely a wish (1.14.102, 26; 1.14.100, 16; Torchia 1990, 10, 15). Augustine's paradoxical argument that we may have to put aside our desire for happiness in order to reach it seems to mean that we have to refine our view of happiness by connecting it with worthiness. Augustine seems here be describing something like the following: we know, for example, that happiness involves a certain experience of joy (1.13.98, 105), and so our desire for happiness might lead us to seek what is pleasant and eschew what is difficult or painful. In doing so, it seems that our wanting to be happy could lead us to neglect the virtues that are the true foundation of happiness. As Augustine says of himself in the *Confessions*, "loving the happy life, I feared it in its seat; and I sought it while fleeing from it" (6.11.20, 49-50).

According to this account, happiness is the reward owed to those who adhere to rectitude in all things, meaning that they fully channel their desire for happiness into the development of their moral character. Happiness is therefore the result of a constant will for rectitude. The delicate relation between rectitude and happiness in this passage, whereby rectitude seems to be at once an end in itself and a means to happiness, is a concrete manifestation of the tension between the two standards that we identified earlier in the discussion of human order—the idea of what is high by nature and the idea of happiness. While it would seem that all ideas of high and low in human nature would be subordinate to happiness as the ultimate possession for a human being, it also seems that the idea of high and low provides a firmer and more immediate rule of conduct than the idea of happiness: in practice, therefore, "living rightly" tends to displace the idea of happiness.

In light of the basic difficulty regarding the status of “living rightly” in this argument, it is important to recall that this argument is the fruit of Augustine’s attempt to save an argument that began with a flawed definition of the good will (1.13.97, 92). The first definition of the good will as “living rightly and honorably and arriving at the highest wisdom” had implied that the moral virtues that defined right and honorable living were instrumental to wisdom, a state of “peace” (1.9.69, 34-35) that seems to be equal to happiness. The definition of the good will operative here implies that the moral virtues are themselves sufficient to guarantee happiness; but since the moral virtues remain conceptually distinct from happiness, an account must be given that connects happiness directly to the moral virtues. The account is that happiness is a deserved reward, but without recourse to an afterlife—a kind of satisfaction in one’s devotion to goodness (O’Connell 1970, 59; see Burns 236-237 on the different attractions to moral virtue of Evodius and Augustine).

In this third argument, the good will remains only a matter of our will, but we have to exercise that will by living rightly in everything in order to become worthy of happiness. Again we can try to express the argument that Evodius has accepted in narrative form: “I know that all want to be happy more than anything else, but few people want the kind of life that is necessary to be truly happy. That life is morally upright above all, which is not easy in the sense of effortless, since it may mean doing difficult and unpleasant things, but it is *ultimately* within our power, and is ultimately rewarded with great joy and happiness. Our desire for happiness can deceive us, since it can distract us from living correctly; we

have to remember that, in the end, in order to feel good, you have to *be* good. It is our lot as human beings to strive to make ourselves worthy of happiness.”

#### 4. Review

The immediate purpose of these arguments is to solve the problem posed by divine punishment for sin by showing that our misery is not unjust. Evodius had raised an objection to our experiencing punishment on the grounds of our native “foolishness,” which implies less-than-perfect moral responsibility (1.12.80). The arguments resolve this difficulty for Evodius by proving to his satisfaction the possibility and sufficiency of a good will. The good will is first posited as something of a foothold against misery: while short of complete wisdom, it is something within our reach and sufficient against misery. In the first argument, Evodius agreed that the good will is attended by joy, which means that our misery comes from failing to dedicate ourselves to the highest things and therefore to feel the satisfaction that comes with knowing we have done so. In the second argument, the good will takes on a more robust form: it finds expression in the cardinal virtues, which provide not only joy, but also a praiseworthy and happy life. The third argument summarizes the argument with the formulation of the good will as at once “great” and “easy.” We can, if we really exercise our will, attain the cardinal virtues and an upright, honorable life “with great ease,” which gains us joy and happiness (1.13.97, 100). This account satisfies Evodius that our misery is in every case connected with our will and is therefore just.

There are at least three difficulties with the account. First, there is the problem of the “ease” with which the good will is acquired. The crucial assumption of the will’s perfect, sovereign freedom, and therefore the “ease” of obtaining the good will, is in some tension with the notion of individual virtues. We noted above that Augustine casts doubt on a simplistic notion of free will in the discussion of cardinal virtues, two of which (courage and moderation) are even referred to as “dispositions” (1.13.89, 4; 1.13.89, 8), by suggesting that the virtues are not only expressions of the good will, but also its constituent parts and preconditions. This suggests that attaining the good will is not as easy as the argument presumes.

A second difficulty regards the “greatness” of the good will. The third argument in particular clarified that Augustine and Evodius’ account requires a particular view of happiness, one that is completely dependent on our willing to live an upright, “correct” life that renders us worthy to receive happiness as a reward. We noted that this assumption of the will’s sufficiency to determine our happiness or misery seemed to require denying any place to external goods in determining happiness. But this is impossible, and while the argument assumes that the cardinal virtues and a praiseworthy life are sufficient to guarantee happiness, experience shows that there are difficulties in guaranteeing that “correct living” is always secure against misfortune. It thus seems that a more adequate position would have to proceed in one of two ways: either by redefining virtue in a way that accounts for the vulnerability of honor and rectitude (as Machiavelli does), or by qualifying the justification of virtue in terms of happiness—whether by denying that happiness really can be the ultimate criterion of virtue, or by accepting a view that

happiness is in some respect a matter of chance or divine gift (whether in this world or the next).<sup>44</sup>

Third, there is the problem of the precise definition of this virtue that, according to the argument, results from the good will and gains us happiness. The third argument simply identified this virtue with “living correctly,” but we noted above that the argument concerning the good will serves as a continuation of the thread of argument, discussed in the last chapter, regarding the fundamental criterion of all human action.<sup>45</sup> That earlier discussion, which had formulated human order in terms of the mind’s rule, had indicated the two criteria of what is high according to human nature and happiness. This thread resumes with Augustine’s addition, in the definition of the good will, of “living correctly and honorably” to the demand for wisdom. The concrete instantiations of rectitude and honor are the cardinal virtues of prudence, courage, moderation, and justice, which render one worthy to receive happiness as a reward. In this movement, we noted that the demand “to live correctly” eventually dominates, leaving behind the earlier insistence on the necessity of wisdom. So what began as the demand for true rationality, a truly scientific way of life, and then the rule of the mind over desire according to its own criteria, which turned out to be some notion of the high by nature and of happiness, ended with the insistence on living correctly above all else as the only path that guaranteed happiness.<sup>46</sup>

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<sup>44</sup> Augustine clearly takes this last route in the *City of God*, where he defines the *summum bonum* as “eternal life” and says that we must “live correctly [*recte vivere*] in order to attain it (19.4, 1-6).

<sup>45</sup> Since the question of divine punishment was resolved by answering the question of what we can do to live well, the argument served to draw out Evodius’ opinions and expectations regarding good living, virtue, and happiness, and therefore his opinions regarding wisdom.

<sup>46</sup> There is a similar disproportion in Cicero’s *On Duties* between the discussion of wisdom as a virtue and the discussion of justice, courage, and moderation, each of which is many times longer than the treatment of wisdom (Cf. 1.6.18-19 with 1.7.20-1.18.60, 1.18.61-1.26.92, and 1.27.93-1.42.151).

We must therefore revisit the question of wisdom, which was dropped from the definition of the good will in favor of “living rightly and honorably,” and then finally simply “living rightly” (1.13.97, 92; 1.14.100, 17; 1.14.101, 20). Is there something defective about this shift from the point of view of wisdom? There is, at least if we probe the precise definition of “living rightly,” on which everything has turned out to depend. It is defined by the possession of the cardinal virtues of prudence, courage, moderation, and justice (1.13.97, 97-98). As we noted, however, these virtues in turn appear to be defined simply in terms of the good will, with the exception of justice, which is defined in terms of “giving to each his own” (1.13.93, 50). So the only non-circular element of the good will, understood as the will to live rightly, as Evodius understands it, is this precept of giving to each his own. As for what defines what belongs to each, or rightful property, we are given no indication. Augustine will eventually say that this is the task of the temporal law (1.15.108, 45-46; 1.15.111, 63-64); as for how this assignment is made, Augustine says “it is difficult and takes a long time to explain,” and says he will not explain it (1.15.111, 64-65). It there seems likely that, until this investigation is completed, Evodius will simply revert in his understanding of property to the definitions laid down by his own community. This would seem to mean that the definition of “living rightly,” as Evodius understands it, will depend fundamentally on the existing divisions and arrangements of his own political community, and therefore on legal authority, rather than on understanding. This is contrary not only to the explicit intention of the dialogue, but to the spirit of wisdom that guided the earlier discussion of virtue. The cardinal virtues that constitute the good will have thus turned out to be moral virtues, defined by standard of what is right and honorable short of

wisdom; and since this standard in turn depends finally on the definitions laid down by political authority, the cardinal virtues have turned out to be merely modes of lawfulness.<sup>47</sup> And so, despite all appearances to the contrary, the question of virtue, whose answer was meant to be the fundamental criterion of political law, has instead been subtly subordinated to the political law.

We are left with the impression that Evodius articulates and accepts, with Augustine's help, a view of human life most conducive to the existence of a higher law as Evodius wants to understand it. Such a view assumes that man is sovereign over himself, that his rationality is evident above all in his rectitude, an upright and honorable bearing, and that this essentially public-spirited and political virtue suffices for happiness under a kind of natural providence.<sup>48</sup> The praise of moral virtue here thus prepares us for the third step of the dialogue's positive teaching, where Augustine and Evodius return to the question of the relation between eternal and temporal law. A rapprochement is effected between the demands of eternal law and the essential limitations of the temporal law by the crucial mediation of the good will as defined here—i.e., as defined by moral virtue alone. The demands of the eternal law are put in terms of acquiring the moral virtues, which, because they are ultimately shaped by the temporal law, bridge the gap between the demands of eternal justice and obedience to human law, despite its defects.

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<sup>47</sup> This is similar to the result in Aristotle's *Nicomachean Ethics*, where the virtue of justice comes to encompass the other moral virtues and is equated with lawfulness (1129b27ff.). Cf. the primacy of justice in Cicero, *On Duties* 1.7.20 and 1.43.152-1.45.159.

<sup>48</sup> Cf. *City of God* 19.25. While the account is meant to justify the idea of divine punishment, it does not rely on a notion of divine intervention in order to preserve the good in this life, or divine judgment to reward them in the next. This is why I use the term "natural providence."

*Evodius' Pelagian temptation*

We have neglected one important aspect of the third argument, which is Augustine's statement on the account of the world that lies behind this account of virtue. At the end of his long speech Augustine returns to the eternal law in order to explain how the relationship between living happily and living correctly could be as they have said. He suggests that the eternal law has established "with unchangeable stability" that merit lies in the will, while reward and punishment lies in happiness or misery (1.14.101, 21-24). This means not only that misery "necessarily" follows those with a bad will, but that happiness is "owed" to the will to live rightly (1.14.102, 26-27; 29-30). These statements have puzzled scholars, since the notion that we could merit happiness on our own is at odds with so many famous Augustinian statements about election, grace, and the bondage of sin. Almost all have had recourse to the theory that Augustine must have changed his mind and later repudiated Book I of this work (Sejourne 1951, 248-9, 359-60; O'Connell 1970; Brown 1967, 140-142; Wetzel 1992, 56, 68-75; see the summary at C. Harrison 2006, 199-202). According to this view, the young Augustine was himself still attached to Stoic ideas of moral perfection and hopeful about the spiritual life, views that find expression here in Book I. However, these scholars fail to mention that Augustine himself gives no indication of such a change in orientation in his lengthy reconsideration of this work. Turning to Augustine's own review of this work, written at the end of his life will help us clarify this difficulty.

Augustine's *Retractationes* is an invaluable resource for scholars of his thought. Written near the end of his life, it contains a summary and review of each published work



of his, sometimes with corrections or additions, and it therefore allows us insight into his most mature judgment regarding them. The entry for *On Free Choice* is the second longest entry, <sup>49</sup>behind only that for *On Eighty Three Different Questions*, the length of which is due to Augustine's recopying those questions. The length of the entry for our work comes from a controversy following its publication. Augustine says that the dialogue was aimed at the Manicheans, who denied human responsibility for evil, instead blaming God or an immutable nature of evil coeternal with God (1.9.2, 19-24). However, this anti-Manichean intention led him to focus on free choice and leave aside the topic of grace, which, Augustine says, later encouraged the Pelagians to claim him as one of their own. Far from denying the free choice of the will, these "new" heretics "assert that the will is so free that they leave no place for the grace of God, since they assert that [grace] is given according to our merits" (1.9.3, 32-36).

Augustine says that the Pelagians were able to claim him because of the "many things" he said on behalf of free choice "as the subject matter [*causa*] of the dispute demanded" (1.9.3, 35-36). He then cites thirteen such passages, including six from Book I (1.9.3, 37-91). However, Augustine denies that he held a Pelagian position at the time he wrote the dialogue. He first summarizes his anti-Pelagian position:

The will is of course the means of both sinning and living rightly, as we discussed in these passages. Therefore, unless the will itself is freed by the grace of God from the servitude by which it has been made a slave of sin and helped to overcome vices, right and pious living is not possible for mortals. And unless this divine benefit by which [the will] is freed were coming before it, it would be given according to its merits and would not be grace, which is always given freely [*gratis*] (1.9.4, 95-100).

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<sup>49</sup> The entry is, for example, more than four times longer than the entry for *City of God*.

Augustine's position therefore separates the falling away from God from the return: while the fall occurs by one's own effort alone, the return requires the action of grace to overcome the corruption and vice that are the fruits of falling away. He then quotes seven passages mentioning grace to show that the position he eventually elaborated in the polemics against the Pelagians was indeed present, if not elaborated, in *On Free Choice*.<sup>50</sup>

The surprising thing about these passages is that they come entirely from Books II and III (C. Harrison 2006, 226). In other words, Augustine seems to admit that the embryo of his true, anti-Pelagian position, insisting equally on free choice and the necessity of grace<sup>51</sup>, cannot be readily discerned from the explicit statements in Book I. This fact at first seems consistent with the influential thesis, mentioned earlier, that Augustine fundamentally changed his mind between the composition of Book I and the latter books. However, our analysis of the arguments regarding the will, which takes into account the dialogic character of the work and carefully distinguish the views of Augustine and Evodius, suggests another explanation. It suggests that the proto-Pelagian elements in Book I belong less to Augustine than to Evodius, who seems at this point to have the very opinions usually attributed to the young Augustine. It is Evodius, whose opinions are drawn out by Augustine and dominate the discussion, with his serene trust in the possibility

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<sup>50</sup> At one point Augustine even exclaims "Behold how long before the Pelagian heresy had shown itself we disputed thus, just as if we were then disputing against them" (1.9.6, 165-166)!

<sup>51</sup> The question of grace is the central one in Augustine's theology. As he himself indicates in the *Retractationes*, he changed his mind on the issue between his conversion and the time he was made a bishop. Augustine indicates his earlier errors in his reviews of his early interpretations of Paul's letter to the Romans. He says that in these works he did not yet understand sufficiently the election of grace, and so failed to see that faith is itself a gift from God, and that, while we must will, God must by grace prepare the will (1.23.2, 53-55). He thus had too simple a view of the *meritum fidei*, which he took at this stage to be entirely up to us (1.23.3, 88-89). The work *Ad Simplicianum*, his first written work as a bishop, is the first instance where his mature doctrine is expressed. He says his review of the work that in writing it he "labored on behalf of free choice of the human will, but the grace of God conquered" (*Retractationes* 2.1.1, 20-22).

and sufficiency of moral virtue to gain the happiness that is owed him, who seems “more Pelagian than Pelagius” (Brown 2000, 141).

It is a difficult question why Augustine at this point only quietly distances himself from Evodius’ opinions rather than challenging them; it is certainly true that the arguments regarding free will and the good will that are drawn out on Evodius’ behalf hold together by abstracting from or ignoring the elements of the will that would make the assistance of grace—that is, of something outside our will—necessary. The corrections that scholars have noted in the later books are therefore not revisions of Augustine’s fundamental thought, but later stages in Augustine’s education of Evodius.



## **Chapter 5**

### **The Essential Limits of Temporal Law**

Having completed the argument about order, virtue, and the genuine demands of morality, Augustine and Evodius now return to the question of the relation between eternal and temporal law (1.15.103, 1-2; cf. 1.6.42, 1-4). This is the third step of the investigation Augustine had proposed in response to Evodius' "crisis of conscience." The first step of that investigation was to distinguish between two laws—the eternal and the temporal—and to uncover "order" as the fundamental moral precept (1.6.43, 11-1.6.51, 74). The second, much longer step was to see how an individual might fulfill this precept of order in himself (1.7.52-1.14.102, 30). The argument held that the rule of the mind, or wisdom, is the perfection of order and therefore the ultimate goal of human life. However, this goal has been frustrated by human will and divine punishment. In their present state of foolishness, human beings must seek order or virtue through having a good will, which was first defined as striving "to live rightly and honorably and to arrive at the highest wisdom" (1.12.83, 32-33). Honor and moral rectitude were thus taken as touchstones on the path to wisdom. However, as the discussion of the good will unfolded, the goal of wisdom, the true measure of order or virtue, became attenuated and then disappeared, rhetorically and substantively. Striving to live rightly and honorably, as defined by the four virtues of prudence, courage, moderation, and justice, came to define the good will and they alone sufficed to guarantee happiness (1.13.97, 96-98; 1.13.98, 105-107; again, cf. 1.13.97, 91-92 with 1.12.83, 32-33; 1.13.97). Happiness thus came to be conceived as a deserved reward for dedication to (and

possession of) these moral virtues, without reference to wisdom. When we then pressed beyond the surface of the argument for the ultimate criterion that determined the practice of these moral virtues, we found either circularity (with the good will defined in terms of the virtues, and the virtues in terms of the good will), or simply the temporal law (cf. 1.13.93, 50 with 1.15.111, 63-64). We therefore drew the conclusion that, for Evodius at least, happiness is conceived as the reward for an essentially lawful disposition.

It was of course fear of the consequences of this very thing—of being guided in moral matters by the political law—that caused his crisis of conscience and gave rise to the whole investigation of the relation between human and divine law. But Evodius suffers no renewed crisis here, since Augustine did not point out the faults of the doctrine as it was drawn out. At the end of the argument Evodius appeared confident that he is not oriented by merely human justice, but by the fundamental moral law. In his mind, his dedication to honorable and upright conduct is a safe haven in the midst of moral and political life, and would dovetail with the commands of political law only accidentally.

As we will see, this confidence in a virtuous life independent of political law is the ground on which Augustine can speak frankly of the weakness of temporal law. Augustine's description of the deficiencies of temporal law and the necessities that prevent it from doing much more than restraining the worst vices in order to maintain a minimal degree of society will not lead Evodius to a renewed crisis of conscience, as it had earlier, presumably because he sees himself as anchored morally outside the definitions that temporal law lays down. Since he has learned what genuine morality is, it does not bother him to admit that the temporal law takes as its aim only the preservation of as much "peace

and human society” as can be maintained among the many vicious human beings (1.15.108, 47-48). As we will see, the argument requires the premise, never quite stated, that these lower demands of the temporal law do not necessarily conflict with the demands of the eternal law, since the modicum of peace and human society that the temporal law secures, while contemptible from the height of morality, is a genuine good. Evodius is ready to believe this, and certain earlier points in the discussion point to this harmonization.

After this basic outline of the relation between eternal and temporal law, Augustine returns to the fraught question of lust and goods of fortune, the great difficulty from earlier in the dialogue. The last conclusion that Augustine presents takes the form of an extended statement on the distinction that they can now draw between the good and bad “use” of temporal goods (1.15.113, 83-84). It is assumed that the good use is neither total indifference nor a matter of simple obedience to political law, and the precise distinction seems to be made according to the eternal law: the person using temporal goods well will use them according to need, as defined by the virtues. But, as we will see, the distinction also has to reflect the distinction between lawful and lawless use as determined by the temporal law in order to maintain the harmonization that Evodius and Augustine seek. This can be done, theoretically or practically, only by allowing the needs of political society to define the genuine moral need by which good people will use temporal goods.

It is here that we see the greatest continuity between the argument about virtue and the harmonization of eternal and temporal law. In both cases the argument depends on granting to moral and political questions a certain independence from the overall human goal of wisdom. In the discussion of order and virtue, this meant taking the right and

honorable as indications of rationality and wisdom; in the harmonization of eternal and temporal law, this means taking the broad ends of the temporal law—what Augustine calls “peace and human society” (1.15.108, 47-48)—as indications of what is correct and honorable. This is brought out quite nicely in the concluding definitions of wrongdoing that Augustine and Evodius offer. As we will see, Augustine returns to the subject of wisdom and science, defining wrongdoing in terms of the neglect of eternal things, “which the mind enjoys through its very self and perceives through itself and cannot lose when it loves them” (1.16.115, 16-18). Evodius, on the other hand, adds to this general definition of wrongdoing the qualification that temporal goods “have a certain beauty of their own” when “placed correctly in their own order” (1.16.116, 25-27). These competing definitions provide a good vantage point to summarize the argument of Book I as a whole.

### 1. Two lovers, two laws

Augustine begins by underscoring the difference between those of good and bad will, and therefore between the eternal and temporal law. Augustine and Evodius do this by establishing that people of good will love eternal, as opposed to temporal things, and therefore have no need of the temporal law. Those of bad will, in contrast, love temporal things; the temporal law is crafted and imposed on them as a response to their disorders and vices. Augustine suggests that people of good will are “lovers of eternal things” (1.16.106, 27-28) due to their love of the eternal law itself as the source of their happiness. Once they choose to live rightly and come to take delight in it, seeing it as “not only right, but sweet and agreeable” (1.15.103, 4-5), they come to love the eternal law that assigns



happiness to the good will and misery to the bad will (1.15.103, 6-7). The joy that attends repeated obedience to the eternal law and the happiness that results engenders a love of the law itself as a benefactor. Those who maintain a bad will, in contrast, cannot love the eternal law that punishes them with misery despite their desire for happiness (1.15.104, 14-15). And since their bad will consists in excessive attachment to goods of fortune (1.15.104, 18-19), they are fairly described as “lovers of temporal things” (1.15.106, 27-28).

Augustine then encourages Evodius to assign these two groups of lovers to the two kinds of law, which Evodius readily does. His immediate thought is that the lovers of eternal things act under the eternal law, while the temporal law is “imposed” on the miserable lovers of temporal things (1.15.106, 32-34). Augustine says that Evodius is correct, provided that he recalls that those living under the temporal law cannot be simply independent of the eternal law, “whence we said are expressed all things that are just or are justly changed” (1.15.107, 37-38; cf. 1.6.48, 48-49). He does not offer a parallel correction to Evodius’ statement that the lovers of eternal things act under the eternal law alone, and even encourages the thought: he says Evodius “understands enough, as it appears” that those of good will, who as such cling to the eternal law, have no need of temporal law (1.15.107, 38-40).

This strict separation of those following the eternal law from those who are subject to the temporal law prepares the long analysis of temporal law that follows. Burns observes that Evodius’ image of the temporal law being “imposed” on lovers of temporal goods—that is, on the immoral—departs from his earlier image of the temporal law being “derived”

from the eternal law in a more or less direct fashion (2012, 241; see again 1.5.50, 56, *te videre*). This difference is confirmed by the fact that here Augustine has to remind Evodius that the temporal law must yet retain some connection to the eternal law of justice (1.15.107, 37-38). This change in image clearly sets up the doctrine of temporal law as molded to the vices of people it rules and limited by the necessities imposed by wickedness. However, Augustine's reminder of the ultimate connection between the temporal law and the eternal law, besides pointing back to the conclusion reached earlier regarding the "derivation" of temporal law from eternal law, reminds the reader of his earlier remark that "an unjust law does not seem to me to be a law" (1.5.33, 18-19). The greatest interpretive problem in this closing section is to see how the temporal law retains its claim to justice, and therefore its power to obligate, as its shortcomings are made more explicit (cf. the ambiguity at Ducos 2008, 950-951, Chroust 1973, 73-74, and Smith 2015, 124, esp. note 83).

## 2. The commands of eternal and temporal law

Next Augustine draws conclusions regarding the comparative moral demands of eternal and temporal law. As for the eternal law, he says it commands us "to turn away love from temporal things and to turn it, cleansed, to eternal things" (1.15.108, 42-43). This simple formulation evidently follows from the conclusion that people of good will are lovers of eternal things, and recalls the earlier definition of lust as "love of those things one can lose unwillingly" (1.4.31, 72-73). From the previous step of the argument, we know that this command is essentially a command to love the eternal law itself, and therefore to

pursue goods of fortune in light of what is “correct,” as embodied in the cardinal virtues. It is consistent with the earlier formulation of the eternal law as commanding “that all things be most ordered” (1.6.51, 66), insofar as elevating the eternal over the temporal means putting the superior before the inferior (1.8.64, 28-30; cf. 1.10.71, 6-7). Augustine will expand on this formulation in his final definition of wrongdoing (Section 5, below).

Augustine’s formulation of the demands of temporal law is far more complicated. He suggests that it commands “that human beings possess those things that are able to be called ‘our own’ for a time, when they cling to them with desire, according to that right by which peace and human society is preserved as much as possible” (1.15.108, 45-48).<sup>1</sup> In other words, the temporal law commands that our possession and disposal of temporal goods be kept within the bounds that preserve the greatest possible degree of “peace and human society” in our community. He divides these temporal goods that the temporal law regulates into five categories: life, liberty, human relations, the political community itself, and money or property (1.15.108, 48-1.15.110, 63).<sup>2</sup>

The first two items on Augustine’s list are obviously regulated by every community’s law. Under the heading of “life” Augustine includes all bodily goods, including qualities like health and strength, as well as things necessary for “good arts” (1.15.109, 49-52). The example of military service earlier in the dialogue surely shows a way that the temporal law regulates our very lives, as does the extreme example of capital

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<sup>1</sup> Literally, “that those things that are able to be called ‘our own’ for a time, whenever human beings cling to them with desire, they possess according to that right by which peace and human society is preserved as much as possible in these matters.”

<sup>2</sup> Smith, following King, divides the state and honors, making six categories, but without any basis in the text for doing so (King 2010; Smith 2015, 124; cf. Cotta 1961, 166).

punishment. However, even in everyday life we can see the influence of law in the regulation of the goods that our bodies need, including nourishment and health. For instance, our education includes provisions for gym classes and physical activity for our children, in addition to training in the arts that are necessary for the procurement of bodily goods. Liberty is also obviously regulated by every political community. Everyone agrees that political order requires setting aside one's private judgment and liberty to some degree, and therefore allowing one's freedom to be circumscribed by the laws of the community.

The third category, however, is more difficult. Augustine includes under this heading "parents, siblings, spouse, children, kin, neighbors, acquaintances and whoever is joined to us by any necessity" (1.15.110, 56-58). This may seem odd at first, but all political laws do include some regulations for the family: in the extreme case, our political authorities will even take children out of their parents' custody. There are of course less extreme examples of family regulation in our law as well, including provisions for the education of children. We also have laws that regulate the relations between spouses, including provisions for divorce. The temporal law in some way regulates all our personal relationships, insofar as it sets limits to what we can do to or with others. In his mature work Augustine will argue that the household is a part of the political community, and that therefore its peace and its precepts must be related to the civic peace and the law of the city (*City of God*, 19.16, 25-34). While our private relations do have a certain independence from the temporal law, they are never completely independent from its regulation.

The fifth category—money, or the things we can buy or sell—is obviously a matter for regulation by the temporal law. The fourth category, however, is a little more puzzling.

How does the temporal law regulate our possession of the political community itself? Augustine notes that the political community “is customarily given the status of parent,” and adds under this heading “honors and praise and what is called popular glory” (1.15.110, 58-60). In Augustine’s time, of course, exile was a great part of political life, and it may be that he is thinking of examples of people being dispossessed of their community and even their citizenship. But for us it may be more illuminating to think of our possession of the community in terms of our standing within it: the temporal law regulates praise and honors, meaning that it determines who receives the offices and highest rewards in the community, and how those offices are earned and for what those rewards are given. In this way our standing within the community is regulated by the temporal law.

To repeat, the temporal law demands that we possess these five categories of temporal goods according to a right that preserves “peace and human society” as much as possible.<sup>3</sup> “Peace and human society” are never defined, but seem to correspond to the twofold end of political law that came to sight in Chapters 2 and 3, with peace corresponding to security and human society corresponding to the cultivation of a virtuous character or way of life.<sup>4</sup> Augustine is very clear that the right by which the political law regulates these things is to be distinguished from true right (cf. Smith 2015, 124, Chroust 1973, 71). For instance, he stresses the fact that the liberty regulated by law is not the “true liberty” of saints and those adhering to the eternal law, but only the liberty of those who

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<sup>3</sup> The most striking omission from Augustine’s list is religion. He appears to give the temporal law no jurisdiction over religion, unless, as Burns suggests, the regulation of “human society” may include the regulation of religion (2012, 254-255).

<sup>4</sup> Cf. Cipriani 2010, where the two ends are reduced to the first end of peace (965), and Cotta, where they are reduced to “social security” or simply “security” (1961, 167, 169).

lack (or wish to lack) “human lords” (1.15.109, 52-56). And yet we know from his earlier statements that the temporal law must somehow be connected to the eternal law, since it must be just (1.15.107, 38-39; cf. 1.6.48, 42-44, 48-50; cf. Cotta 1961, 169n9, 171). We also know from the earlier argument that all political law must eventually claim to cultivate virtue in order to justify the obligations it imposes on its citizens. This means that there is some connection between the preservation of peace and human society and wisdom, the good will, honor and rectitude, and love of eternal things. This connection is never explicitly made, however. In fact, Augustine passes over entirely the question of how the temporal law makes its arrangements and determinations, as we note in the next section.

One could argue that the ends that govern the temporal law—peace and human society—have a claim on the virtuous person, as do the laws producing or preserving them as much as possible. And yet, since it seems that “peace and human society” only preserves, although on a lower level, the twofold goal of political law (security and virtue) that was discovered earlier in the dialogue, the argument would again turn out to be circular—it is virtuous to obey laws that cultivate virtue as much as possible. But perhaps this is clear enough for practical purposes: someone devoted to virtue will respect laws that maintain peace in his community, along with the rudiments of good character that the laws can cultivate. To get greater clarity about this, we would need to break out of the circularity that limits the argument—that is, to get a definitive answer to the question of virtue that political life raises—and attain the prudence that provides for virtue amid the necessities of political life.<sup>5</sup>

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<sup>5</sup> On this latter point, see Burns (2012), 270-272.

### 3. The lesson

Strangely, Augustine immediately forecloses any inquiry into how the temporal law actually “distributes to each his own” according to the rule of “peace and human society.” He tells us that this “is a difficult and long thing to explain clearly, and is not necessary to what we have proposed” (1.15.111, 63-65). That proposal is “the question concerning the two laws” (1.14.102, 29-30) or “how far the law by which earthly peoples and cities are governed has the right of punishment” (1.15.112, 75-77; recall 1.6.42, 1-4). For this question, it is necessary to articulate only the basic task and moral standard of political law before turning to the general way the temporal law punishes wrongdoing and the impediments that human vice poses to the task of correction. “It is enough,” Augustine says, to see that the temporal law can vindicate wrongdoing *only* by taking or carrying away one of these possessions (1.15.111, 66-68). The law therefore coerces by fear, or a combination of fear and greed: fear of losing these possessions “twists and turns” the souls of those ruled by the law and forces their use of these possessions within “a certain limit suited for the bond [*vinculum*] of whatever sort of city is able to be established for human beings of this kind” (1.15.111, 68-72). The maintenance of this limit requires that the temporal law be limited to punishing taking someone else’s goods through “dishonesty” [*improbitas*], rather than any excessive “love” of any temporal goods: the temporal law punishes stealing, rather than miserliness.

Augustine now announces to Evodius that they have finally arrived at an answer to the question of how far human or temporal law has the right to vindicate wrong (1.15.112,

74-77; 1.6.42, 1-4). That limit is marked by and defined as trespasses against the divisions of property in the community ruled by the law—that is, “dishonesty” [*improbitas*]. Augustine now puts another conclusion in Evodius’ mouth: “Therefore you also see this, that there would be no punishment inflicted on human beings, whether through injury or through vengeance, if they were not loving these things that are able to be borne away against their will” (1.15.112, 79-81). This is evidently the lesson Augustine wants Evodius to take away from the discussion of temporal law: that it is in principle limited to punishing transgressions against the order of property within the community, which arrangement is itself limited by the necessity of creating a “bond” among vicious human beings that preserves some modicum of peace and human society, and that the punishments themselves are devices that turn human beings’ excessive attachment to bodily goods into a means of restraint (Ducos 2008, 950-951).

Thus we come once more to the problem we sketched in the last section: Augustine’s very frank account of the fundamental weaknesses of temporal law is not accompanied by a clear account of how the lower standard that the temporal law inevitably uses relates to the account of morality that has been built up in the second half of the dialogue. As we will see, the next step in the conversation, and the last major step in conversation of Book I, proceeds as though this connection is perfectly clear. However, the only thing we can say for certain is that, on the one hand, truly moral people will take their bearings by the eternal law, which commands doing in every case what is right, as demanded by the virtues; and that, on the other hand, the temporal law will take its bearings



from the two ends of peace and human society, as well as the political necessities that limit the practical attainment of those goods.

It is good to recall that the whole investigation into eternal and temporal law was occasioned by Evodius' sense that he could defend the political law and those under its command, but not the human beings who used the license given by law to defend themselves (1.5.34, 20-23, 1.5.38, 54-56; 1.5.37, 42-43). Here Augustine gives Evodius a much stronger version of the defense of political law that Evodius had begun to articulate there—that the political law is constrained by necessity to leave some crimes unpunished and to focus its attention on greater crimes (especially those that violate the fundamental order of property). He would therefore seem to strengthen Evodius' conviction that officers and ministers of the law (soldiers, judges, and police, for example) are truly compelled by their duties under the law, and therefore free from wrongdoing, despite the deficiencies of the law they serve. However, this conclusion depends on seeing the ends of the temporal law as having some claim to define true morality, despite their lower status. Augustine here gives no indication that anything else is the case, and we know from the discussion of the cardinal virtues earlier that Evodius is ready to believe this. In fact, Augustine's rhetoric here puts one in the mood to appreciate the very dire situation caused by human vice, and to see the temporal law as beleaguered in its efforts to maintain even the basic elements of political society. In this case, it does not seem so great a leap to think that the low but genuine goods secured by temporal law have a serious claim on the life of the virtuous, and that therefore the commands of temporal law do not contradict genuine morality (*Letter* 229.2). In fact, Evodius had already made this leap in his earlier defense

of political law and its ministers, where he had appealed to the real superiority of “gentle,” as opposed to “savage,” social conditions from the point of view of justice (1.5.34, 23; 24).

The argument here builds, plausibly enough, on this general intuition.

#### 4. The rehabilitation of goods of fortune

The final conclusion that Augustine draws seems to follow from the entire discussion of eternal and temporal law, and takes us back near the beginning of the conversation to the first difficulties with the notions of lust, goods of fortune, and the difference between good and bad people (1.3.20, 47-49 and 1.3.21, 56-58; 1.4.29, 60-69). The difficulty there had been articulating a consistent rule of conduct regarding those goods we can lose against our will. Evodius had vacillated between a rule of complete indifference to those goods and simple deference to the political law, leading Augustine to propose a new investigation into the relation between divine and human justice. Augustine’s explicit reason for returning to the subject of goods of fortune is the fact that they can now distinguish between those who use these goods well or badly (1.15.113, 83-84 with 1.15.112, 81). He guesses that, since they know that some use these goods well and others badly, Evodius will deny that these goods themselves deserve blame merely because they can be used badly. Evodius indeed agrees that “not the things themselves, but the human beings who use them badly must be blamed” (1.15.113, 100-101). The final conclusion of the argument in *On Free Choice I* is therefore something of a rehabilitation of goods of fortune.

Augustine's formulations here seem a little overblown, and evince great confidence in the distinction that they are now able to make. He begins with a description of the person using goods of fortune badly:

Since therefore someone uses the same things well and another badly, and he who [uses them] badly clings to them with love and is tied up, clearly subject to those things that were properly subjected to him and designating them as goods for him, by ordering and treating which things well he ought himself to be good (1.15.113, 83-87);

He then turns to the person using them well:

but he who [uses them] rightly, shows that they are indeed good, but not for him (for they do not make him good or better), and for this reason is not stuck to them with love, nor makes them as if members of his soul, which happens by loving, lest they disfigure him with torment and decay whenever they begin to be curtailed; but he is wholly carried away beyond them, prepared to have and to rule them where there is need and more prepared to lose and not to have them (1.15.113, 87-94).

From this Evodius concludes that goods of fortune themselves are not to be blamed, since to do so would be like blaming money on account of the greedy, food and drink on account of gluttons and drunks, or beautiful women on account of adulterers (1.15.133, 100-101).

The image of goodness is quite attractive, but we must press for the specific grounds of Evodius' confidence in making this distinction and for the specific ways in which Evodius thinks this independence is maintained by good people. The image of the person who uses the goods well seems clearly to be the true lover of eternal things, or the person of good will, while the person using them badly seems clearly to be the person of bad will, who elevates these goods above living rightly and becomes embroiled in them. Good people will use these goods or not according to "need," scorning where they must scorn

and ruling where they must rule (1.15.113, 93-94). It seems that this “need” would have to be defined by the demands of the cardinal virtues to be consistent with the prior argument. Of course, all those on whom the temporal law is imposed, since they are lovers of temporal goods, must be among the bad who have used temporal goods badly (1.15.106, 34). But what about those who obey the commands of the temporal law, abiding by the rules of property and honesty, including the lovers of the eternal things in that community? It would seem that actions in accord with temporal law, insofar as they can be performed by those in the political community who are guided by the eternal law, would have to fall under the “good use” of temporal goods as well, although perhaps in a secondary way. As we have mentioned before, this is foreshadowed by the definition of justice—the only non-circular definition among the virtues—which directs us to the temporal law that assigns to each what is his own (1.13.93, 49-50 with 1.15.108, 45-47 and 1.15.111, 63-64). It seems then that the distinction between good and bad use of goods of fortune will depend, despite appearances, on the definitions made by temporal law (cf. O’Connell 1970, 56, Torchia 1993, 269, Smith 2015, 128).<sup>6</sup>

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<sup>6</sup> Augustine’s reminder to Evodius that the temporal law must have reference to the eternal law appears now to require an addition, since it turns out that the followers of the eternal law, like Evodius, take their bearings from the temporal law. We could say that the obedience given to the temporal law by the lovers of eternal things comes from a different motivation—their attachment to virtue and to the ends of peace and human society that the temporal law brings about and maintains, as opposed to other motivations (fear or pride, e.g.). This suggestion is strengthened by thinking through the consequences of the temporal law’s bearing some trace of the eternal law. This requires that the distinction between *probitas* and *improbitas* that is decisive according the temporal law bear some resemblance to the distinction between the love of eternal things and love of temporal ones. The resemblance can be maintained only by virtue of the fact that the root of the distinction *probitas-improbitas* (the right that preserves as much peace and human society as possible) is consistent with the demands of “living rightly,” or has some claim to define the actions of the cardinal virtues. This right must shape those virtues if the actions demanded or prohibited by the temporal law are to be binding on the lover of eternal things. In other words, the cardinal moral virtues must on one level simply be varying modes of lawfulness or patriotism.

We can approach this problem in another way if we think about specific examples of uses of goods of fortune that Evodius would be likely to blame or praise. For instance, we can assume that he does not think soldiers who fight to defend peace and human society against enemies or the officers of the law and magistrates who use force to maintain peace and human society internally are hopelessly “stuck to” temporal goods (1.15.113, 90). But what about someone who uses force to defend him or herself, or a slave who kills his master? It will be helpful to trace the various points at which the question of goods of fortune arises in the conversation.

Augustine had laid out the question quite clearly in response to Evodius’ difficulty with the example of someone killing out of fear (for instance, a slave who kills his master). Evodius had been inclined to say that such a person would be moved by lust, but could not prove that the desire to live without fear was bad (1.4.24, 20-21); he therefore had to choose between condemning him simply because he had violated the law (1.4.25, 37-39) and excusing his killing altogether (1.4.29, 58-59). Augustine then refocused their argument by distinguishing between good and bad people in terms of their general attitude towards what he called “things that cannot be possessed without the danger of losing them,” or what we called goods of fortune. He characterized the good as limiting their “love” of these goods in light of some higher moral principle, while the bad pursued these goods no matter the impediments, including rules of morality (1.4.30, 63-69). The question was then what this rule is that the good respect in their pursuit of things that are generally good (1.4.30, 63-64; cf. Aristotle, *Nicomachean Ethics* 1129b1-4).

Evodius took hold of this argument and developed the rule that “love of those things one can lose unwillingly” was the definite sign of wrongdoing (1.4.31, 72-73). This again led him to rush into extremes, however—this time, between the extremes of strict pacifism (as the sign of complete indifference to goods of fortune) and strict obedience to the duties imposed by political law. The tension between these positions led to Evodius’ crisis of conscience and Augustine’s proposal to look more closely at the relation between divine and human justice. He turned first to the political law itself, and showed by the example of justified revolution that the whole structure of political law is dependent on some higher standard of morality, which he called the “eternal law.” Evodius’ ready consent to the idea of justified revolution shows that he does not think genuine morality requires being neutral or indifferent to goods of fortune—for what is a revolution if not a fight to replace one arrangement of temporal goods with another? Evodius feels no pangs of conscience about this hypothetical revolution because he sees it as in the service of true morality, which must demand that serious people rule, rather than the wicked (1.6.50, 61-62).

But what is true morality? As we noted, this question is treated under the heading of “order,” as the fundamental demand of the eternal law—“how is a human being most ordered in himself” (1.7.52, 1-2)? Augustine and Evodius come close to discussing goods of fortune when the subject of appetite is broached, but only to say that appetite must be completely subordinated to reason (1.8.64, 25-26). Once the discussion of wisdom as the summation of order and morality stalls and they turn to the good will as the means we now have at our disposal to make progress toward virtue and wisdom, Augustine and Evodius refer to goods of fortune only in a general way, as fundamentally inferior to the good will

and properly subject to the cardinal virtues (1.12.84, 39-41, 1.12.85, 45-47, and 1.12.86, 56-57, 58-60, 61-62, 63-64; 1.13.89, 5-6 and 1.13.91, 28-29; 1.13.95, 72-74, 1.13.97, 95-96, and 1.13.97, 99-100). We have noted the difficulties in drawing a firm rule of conduct from this doctrine of virtue; for now we need say only that the closest Augustine and Evodius come to the particular cases that began this whole controversy is their praise of courage and justice as two of the cardinal virtues that define honorable and upright conduct, and therefore the good will. By giving this status to the virtues characteristic of soldiers and magistrates, and by defining them in the more or less traditional way (1.13.89, 4-6 and 1.13.90, 12-13; see also 2.1.3, 27-28), Augustine and Evodius would seem to grant that soldiers and magistrates partake of honorable conduct in the performance of their offices, and therefore of true morality (1.13.93, 54-56, 1.13.97, 96-98). We have noted many times that in practice this means giving the greatest weight to the political law that defines what belongs to each (again, 1.13.93, 49-50 with 1.15.108, 45-47 and 1.15.111, 63-64).

As the discussion moved downward from the ultimate demands of morality to the particulars of the temporal law, Augustine presented something of a justification for abiding by the arrangements of property made by the temporal law, despite its shortcomings. He insisted that the temporal law was limited by necessity from taking its bearings from the true demands of the eternal law, and so looked only to “peace and human society” in making and defending the arrangements in the community it rules. Therefore, while the argument made very clear that the concern of the temporal law is (stated positively) “honesty,” rather than virtue, its effect is to make Evodius (and us) more

respectful of the enormous task the temporal law has in bringing about the limited, but genuine goods that are in its power.

This brings us back to the passage we have been considering in this section regarding the distinction between good and bad use of goods of fortune. This review has once again shown us that Augustine's argument, in both its high and low registers, has given Evodius a justification for what he was inclined to do anyway—to take his bearings from the law of his political community. Just as living honorably and correctly had been taken earlier as a sign of wisdom (1.9.66, 36-37 and 1.12.83, 31-33), so now adhering to the limits imposed by temporal law is taken as a sign of what is honorable and correct. While the high tone and clear definitions in this last conclusion presume that a robust moral standard independent of political law has been laid down, all the evidence we have suggests that the touchstone in Evodius' moral and political judgment will continue to be his instinctual trust in his community's political law (recall 1.3.18, 34-35).

### *Revisiting the question of self-defense*

This is the place for us to reconsider Evodius' opinion of self-defense. While the doctrine of temporal law has given Evodius additional justifications for the soldiers, judges, and ministers whom he was inclined to defend before, it has not directly touched on those private persons who would use the "power" or "license" given by law in defense of their "life, liberty, or purity" (1.5.32, 6; 1.5.33, 12-15; 1.5.34, 22-23; 1.5.37, 43-44). Earlier, Evodius found no way to justify such people. He had ultimately argued that nothing subject to loss could really be defended as "our own," and that those who killed in self-defense



were “polluted with human blood” on behalf of goods “that ought to be held in contempt” (1.5.38, 51-55; 1.5.39, 62-64). In these last sections, however, Evodius has accepted an account of how temporal goods do become “ours for a time” (1.15.108, 46) and has accepted that one can use temporal goods without necessarily “loving” them (1.15.113, 84, 90, 91; recall 1.4.31, 72-73 and 1.5.37, 45-46). What does this mean for his opinion regarding the individual defense of life, liberty, or purity? Is he still of the opinion that such actions are “lesser acts of wrongdoing” that must be tolerated by the law but can never engaged in by good people (1.5.34, 22; Wetzel 1992, 66; Fortin 1996b, 205-6)?

The fact that Evodius now shows no signs of his earlier crisis of conscience suggests that he considers the conversation to have settled the issue. This would mean that he no longer sees the exercise of one’s temporal right to self-defense as subject to the hidden law of divine providence (1.5.39, 60-62). What would be the grounds of this change? It seems possible that the grounding given to his instinctive trust in the temporal law may also shore up his instinct to pardon acts of self-defense (1.5.34, 20-26). He now has an argument that transgressions against the temporal law are genuine sins, and that defending the divisions of the temporal law is genuinely virtuous (cf. Cotta 1961, 168-169). We also know that he sees temporal goods as low, but genuine, and able to be used well, and so he may be less likely to assume that those who defend them against aggression are simply moved by lust. This would make it less likely that Evodius would consider resistance to violent attack a bad use of liberty, for example, since he likely sees life and purity as true goods, even if they can be used badly (1.15.113, 83-84; 100-101).

However, it is still the case that Evodius ultimately takes his bearings from the eternal law, and so if confronted with the issue directly would surely only allow self-defense insofar as it were compatible with the cardinal virtues. There is no evidence that he could ever accept something like the unqualified right to self-defense as found in Hobbes and Locke (Hobbes 1996, 91; Locke 1988, 270-1), since he clearly understands virtue to mean sometimes accepting the loss of temporal goods, even one's own life (1.5.33, 16-17; 1.13.89, 4-6, 8-9; 1.15.113, 92-94). His experience of what he ought to pursue is circumscribed his experience of duty (1.5.34, 27). The fact that soldiers and police use force to defend temporal goods on behalf of an entire community makes him see their actions in terms of duty and virtue (whether courage or justice); the same does not seem to apply to acts of self-defense. Could individual acts of self-defense be construed in terms of courage or justice? Could the justifications Evodius uses for the officers of the law apply in some way to private persons?

This leads to the suggestion that perhaps Evodius will accept self-defense on the grounds that one acts not simply on one's own behalf, but also on behalf of the temporal law and the political community as a whole. Such acts would have to be sanctioned in some way by the temporal law. It may be that the account of the temporal law as doing the best it can to stem the flow of vice—its lingering attachment to eternal law—causes Evodius to see self-defense as more than simply standing on one's individual right as allowed by human law. After all, the account of temporal law as vindicating the most basic moral rules in a community makes violent assault appears perhaps even more savage than it did before: such criminals cannot even abide by the lowest possible standards of decency.

Defending oneself as permitted by the temporal law would be fundamentally a defense of the rule of law or the common good, taking a stand against the tide of vice that always threatens to overwhelm the community, rather than simply doing harm in the name of a unqualified individual right. This would cast self-defense more in terms of the correction or the prevention of another's crime, and thereby imbue it with a justice that it otherwise would lack.

##### 5. The final definition of wrongdoing: the return to a scientific way of life

Having pronounced the distinction between the good and bad use of goods of fortune, Augustine now turns Evodius' attention back to the question of wrongdoing. After a brief review of the topics they have discussed,<sup>7</sup> he reminds Evodius that they "had begun to seek what it is to do evil, and for the sake of this we have said all the things that have been said" (1.16.115, 13-14). Augustine now offers in his own name a definition of wrongdoing:

"It is now permitted to turn our attention and consider whether wrongdoing is anything other than, with eternal things having been neglected, which the mind enjoys through its very self and perceives through itself and cannot lose when it loves them, to pursue temporal things and each of the things that are sensed through the body, the lowest part of the human being, and are never able to be certain, as if [they were] great and wondrous" (1.16.115, 14-20).

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<sup>7</sup> Augustine's summary has four points: 1) they have "begun to see" the strength of the eternal law and have "discovered" the power of temporal law in punishing; 2) the two kinds of things and two kinds of people have been "sufficiently and openly distinguished"; 3) it is "established" that what each person chooses to pursue and embrace is placed in the will, and that nothing dislodges the mind from its rule except the will; 4) it is "manifest" that not the thing, but the one using it badly must be blamed (1.16.111, 1-11). The summary does not follow the order of conversation, although it makes sense logically as expressing the general position that has been articulated.

Augustine says that, in his opinion, this definition distinguishes the whole genus of wrongdoing (1.16.115, 20-21). The first striking thing about the definition is how general it is: the essential definition of wrongdoing is the pursuit of temporal goods to the detriment of eternal ones. Considering that the only eternal thing discussed so far is the eternal law that expresses true morality, all Augustine seems to be saying is that wrongdoing is to pursue temporal goods while neglecting morality.

A second striking thing, however, is Augustine's return to the language and images of science and understanding that he had employed in the discussion of wisdom, prior to the introduction of the good will. The eternal things he describes here are somehow "enjoyed" and "perceived" by the mind itself—the image here seems to be of a purely mental act, and reminds us of the earlier discussion of science as a way of life and the definition of understanding as "living clearly and perfectly by the very light of the mind" (1.7.59, 59-60). Augustine's definition of wrongdoing therefore reminds us that the goal of life, and therefore the fundamental datum of morality, is science or wisdom; the ultimate manifestation of human reason is not the actions of the moral virtues, but wisdom (recall 1.7.59, 56-60, 1.9.66, 37, and 1.12.83, 32-33). As Augustine will put it later in a letter, our mature will is given the power "to choose another life [besides the sensual life we have from our birth], the joy of which is in the mind, the happiness [*felicitas*] of which is internal and eternal" (*Letter* 140.2). His definition seems then to be something of a belated correction to the tendency in the discussion of the good will to think of virtue entirely in terms of moral virtue and practical wisdom. A sign of this tendency is that the only eternal thing that those of good will were said to love was the eternal law that commands the acts

of the moral virtues and rewards them with happiness (again, compare 1.12.83, 32-33 with 1.13.97, 92 and 1.14.102, 29-30; cf. 1.15.103, 3-7 and 1.15.106, 27-28).<sup>8</sup>

Evodius assents to Augustine's definition, but rephrases it in his own words. In doing so, he adds something that appears to come from the last conclusion regarding the good and bad use of temporal goods, and that seems to summarize the change the conversation has had on his moral and political opinions:

“It is as you say, and I assent that all sins are contained in this single genus, when each person is turned away from divine things and those truly remaining and is turned toward the changeable and uncertain; *although these things are rightly placed in their own order and accomplish a certain beauty of their own*, it nonetheless belongs to a perverse and disordered spirit to be subject to following them, for conducting which at his nod he has rather been preferred by divine order and right” (1.16.116, 23-29; emphasis mine).

Evodius' reformulation of Augustine adds the notion of divinity<sup>9</sup>, which perhaps indicates that he is thinking primarily of the eternal law—that is, the law of divine providence (1.5.39, 60-62; 1.6.42, 3-4)—as the ultimate objection of devotion, as opposed to other objects of contemplation. More important, however, is his obscure concession to temporal goods, and the implication that they have some independent standing in the order of things—an independent structure and source of beauty (cf. *City of God*, 19.26, 4-6). It is

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<sup>8</sup> At this point it is perhaps clearer what Augustine meant by saying near the middle of the dialogue that he thought the question regarding the difference between living and knowing that one lives “might perhaps detain us as long as all the things said from the beginning of our discussion” (1.7.57, 37-40; see pp. \_\_, above). It seems to be an admission that the question of what it means to possess reason is not really settled (insofar as it is settled) until this point, where Augustine's definition of wrongdoing calls into question the adequacy of the earlier arguments that had ostensibly settled that question.

<sup>9</sup> S. Harrison takes Evodius' definition of wrongdoing to be the final position of Book I, and takes it to resolve the question of sacrilege that had been left off earlier (1.5.32, 4; 2006, 85n5). The definition may resolve the question of sacrilege in Evodius' mind, but this interpretation fails to attend carefully to Augustine's own definition of wrongdoing (1.16.115, 11, *mihi videntur*) and the challenge it poses to the preceding argument. Torchia also takes Evodius' definition as the definitive one, and therefore assimilates the conclusion here to Augustine's later, explicitly theological presentations of wrongdoing (1990, 9). Cotta does not make this mistake, but interprets Augustine's definition in the same manner (1961, 166n5).

not clear exactly what Evodius means here. As we discussed in the previous section, the conversation has pulled Evodius away from his pacifist and extremist tendencies by encouraging him to see the temporal law that regulates temporal goods as something low, but essential to the moral economy of human life. Perhaps the formulation Evodius uses here is his way of putting this lesson: while the temporal order fades into insignificance when compared to the eternal order, and is beset by infinite difficulties, its proper arrangement is of concern to serious people, and therefore a worthy object of striving for the virtuous (Burns 2012, 261). Like the “wise judge” Augustine describes in *City of God*, Evodius seems to be in a position to feel the call of duty to human society, despite its shortcomings, and to feel that its desertion would be an offense against piety (19.6, 21-24).

However, it may also be that Evodius’ assertion of a limited independence for the temporal order points back to the difficulty we have noted many times regarding the ultimate standard of temporal law and its connection to eternal law. It may be that this is Evodius’ way of formulating the relation between the demands of eternal and temporal law, in which he emphasizes not the necessary connection between the two (recall the language of derivation that attracted him earlier in the conversation: 1.6.50, 56-58), but the relative independence of temporal law. The temporal law aims at “peace and human society,” as opposed to order and moral rectitude, and therefore would seem to have a standard all its own. But this does not alarm Evodius, since the arrangement of temporal goods according to this standard, far from being neutral with respect to genuine morality, has a certain “order” and even “beauty” that we can recognize.

But of course we know—nor would Evodius deny it—that the temporal law cannot be simply independent of the eternal law. This brings us back to Augustine’s definition of wrongdoing and the subject of wisdom. The question we are left with is just where things stand with regard to this ultimate goal, and just how attenuated it has become in the doctrine that Augustine and Evodius have put together. We can think about this question by asking about the fundamental criteria of the two spheres that Augustine and Evodius have carved out below the plane of science or wisdom—the sphere of moral virtue and the sphere of political law. The sphere of moral virtue was carved out by the identification of “living honorably and correctly” as the path to wisdom, which brought with it the cardinal virtues as objects of striving and indications of a good will; the sphere of political law was carved out by the harmonization of the demands of eternal and temporal law, which brought with it the ends of “peace and human society” and the divisions of possessions in the political community as limits binding even the person of good will. It would not be problematic if these “steps down” were perfectly clear deductions from wisdom or science, but that is not the way the argument proceeds: rather, the lower standards are taken to be clearer than the ideal of wisdom itself, and are assumed to be sufficient to give content to the life of virtue.

### *Wisdom and virtue in Books II and III*

Books II and III of *On Free Choice* go far beyond the moral and political conversation in Book I. Book II is taken up with the question of whether God should have given human beings free will at all, since they can use it for evil. Augustine proposes and carries out a three-part investigation, asking whether God exists, whether God is the source

of all good things, and whether free will is a good (2.3.20, 1-5). In brief, God's existence is proved by showing that there is something higher than our minds (2.15.153, 1-16); that God is the source of all good things is proven by the necessity of form upholding all things (2.17.176-177); finally, that free will is a good is proven by the fact that "we cannot live rightly without it" (2.18.179, 14-16; 2.18.189-190; 2.1.5). Book III then takes up the question of how we are to conceive of this movement of the soul that we call free will.

The few places in Book II where they do refer briefly to the question of wrongdoing only amplify the difficulty raised by Augustine's return to wisdom. In the analysis of the human mind that Augustine uses to prove God's existence they come to discuss wisdom, which they and everyone see "must be sought" (2.10.111, 13-14; 2.10.112, 16-17). They then formulate certain "rules of wisdom" that are as true and unchangeable as the "rules of number" (2.10.119, 83-84). Augustine presents these rules in two groups of three:

A1. One must live justly

A2. Worse things must be subordinate to better ones and equal things must be compared to equal things

A3. What is proper must be given to each

B1. The incorrupt is better than the corrupt

B2. The eternal is better than the temporal

B3. The inviolable is better than the violable

These "so-called rules and certain lights of the virtues," as Augustine calls them, are not only true and unchanging, but present and common to all minds; they define or pertain to wisdom (2.10.116, 48-55; 2.10.118, 76-77; see also *On the Trinity* 14.15.21,



*Interpretations of the Psalms* 145.5). Like the “rules of number,” they express immutable truths that belong to no one in particular (2.10.119, 83-87; 1.12.130, 1-6). These “inner rules of truth” are used to judge bodies and souls [*animi*], but are not themselves judged: we discover them, rather than correct them (1.12.134, 29-38). The truth these rules express is superior to our minds (1.12.136, 50-51). This is the thing higher than the human mind that Augustine had promised to prove; submission to this truth defines our liberty (2.13.143, 48).

This discussion of the nature of wisdom and the ultimate rules of judgment clearly presents moral judgment as proceeding downward from the very structure of the human mind; it therefore does not take into account the problems posed by the political interpretations that we are accustomed to give to justice (cf. Torchia 1990, 12).<sup>10</sup> For instance, we know that our experience of what is proper to each is mediated by the temporal law that makes those divisions, and Augustine’s method in Book I is to give Evodius new reasons to abide by its judgments (1.15.111, 63-64). As for the superiority of the permanent to the impermanent, we have seen that this means little more than preferring the eternal dictates of morality to any appetite; and the only interpretation of those eternal dictates that we have so far depends in fact on the arrangements of temporal law. This doctrine of “inner rules of truth” therefore does not advance the question of wrongdoing from Book I.

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<sup>10</sup> It is striking that Augustine uses justice here, which was the only virtue that had not simply been defined circularly (1.13.93, 47-50), and which was most closely connected to the temporal law (1.15.111, 63-64). At the beginning of Book II Evodius gives a perfectly political interpretation of the virtue when he distinguishes it from goodness: while it is characteristic of goodness to do good deeds for foreigners (*alienos*), it is not characteristic of justice to punish foreigners (2.1.3, 25-28).

Later in Book II Augustine returns to the subject of the virtues, and emphasizes their connection to the truth and to happiness. He denies that justice can be used badly, and counts it among “the highest goods that are in the human being himself,” along with “all virtues of soul that constitute a right and honorable life,” including prudence, courage, and moderation (1.18.190, 85-89). These cannot be used badly because they are enlivened by “right reason [*recta ratio*], without which they cannot be virtues,” and which cannot be used badly (1.18.190, 89-92). He defines the happy life here as “the disposition of soul clinging to the unchangeable good [that is, the truth]; this [disposition] is the proper and first good of the human being; in this are also all the virtues” (1.19.196, 39-42). Human beings become wise and happy “by clinging to the truth and wisdom” (2.19.197, 44-46). The virtues are therefore obtained “by shaping the soul according to those unchangeable rules and lights of the virtues” (1.19.198, 52-53). Evil or sin is then defined as the voluntary “turning away from unchangeable goods and turning to changeable ones,” which merits the “just penalty of misery” (1.19.200, 72-75; 199, 59-61). The question of the third book is how this movement arises (2.20.201, 76-78; 3.1.1, 4-7).

The descriptions of virtue and happiness that Augustine uses here only serve to remind us of the difficulties we have encountered in trying to put together a clear account of the conversation in Book I. The statement that the virtues are ultimately defined in terms of happiness and the disposition to cling to the truth stands in contrast with the circularity of the account in Book I, where the ideas of “living honorably and correctly” and the goals of “peace and human society” were made to bear so much weight, and ultimately were not defined in a non-circular manner. The discussion in Books II and III does not clear up the

ambiguity of Book I, but simply moves on to the question of how or why the human mind has access to the truth of eternal law.

## **Conclusion**

Where, then, does the reader stand on the question of wrongdoing and the overall question of theodicy with which *On Free Choice* opens? We approached the dialogue through Augustine's account in the *Confessions* of his early examination of "true, inward justice." The summary of his view in the *Confessions* indicated the importance for justice not only of metaphysical and Biblical principles, but also of the complications caused by politics. In this dialogue, which promised to reproduce in some way the reasoning behind the view summarized in the *Confessions* (*On Free Choice* 1.2.10, 3-5 with *Confessions* 3.7.12, 1-6 and context; *On Free Choice* 1.2.11, 9-10), this political aspect of justice takes center stage. Once Augustine pushes the conversation away from the general question of theodicy to the particular question of wrongdoing, the greatest barrier to the formulation of a truly independent standard of wrongdoing is the authority of political law. However, as we have seen, this authoritative influence of political law remains in the doctrine of eternal law that emerges over the course of Book I, even when Augustine and Evodius seem to pass far beyond it into the heights of wisdom and true morality. The dialogue therefore remains inconclusive on the major question.

This inconclusiveness does not mean that the conversation has settled nothing. The conversation has shown us that the first step of Augustine's investigation of justice was an analysis of political law from the point of view of the citizen. That is, Augustine was first

of all concerned to understand the ground of the moral obligation that justifies the citizen's obedience to political law. His recapitulation of this effort at understanding includes both a preliminary analysis of political law and the general outline of a solution to the problem of political obligation. The analysis of law is conducted by means of a series of questions that any thoughtful citizen has to consider—how to distinguish between police and murderers, how to think about acts of self-defense, how to think about military service, and how to justify political revolution. That analysis shows that the political law, or the common good that the political law brings about, cannot be understood as simply the preservation of life and substance. Augustine shows that the political law is necessarily concerned with what he and his predecessors called virtue—with cultivating a certain character or way of life among its citizens that serves as a foundation for the duties it imposes on them. The analysis also shows that just legislation is impossible without the guidance of prudence that discerns the foreseeable possibilities in a given situation and brings about or maintains the common good that is possible at a given moment. A true understanding of law and political obligation therefore requires not only a science of virtue, but political science or prudence.

The general solution that Augustine offers to the problem of political obligation is a doctrine of eternal and temporal law. The solution works by conceiving the “order” commanded by the eternal law to include the possession of the cardinal virtues of prudence, courage, moderation, and justice, which as manifestations of “right and honorable living” incline one toward public-spiritedness and respect for law, and by conceiving the temporal law as limited by necessity to securing the rudiments of “peace and human society,” the

goodness of which is manifest to everyone. By elevating the life of honor and rectitude and by constraining the temporal law to punishing only the worst vices against public order, Augustine gives the serious citizen a way of justifying his obedience to political law and of explaining his political obligation in terms of his dedication to morality.

This general solution, while satisfying to Evodius, weakens at several points. The doctrine of temporal law obviously expresses only half the truth: while the temporal law is limited by the necessity to maintain a lower moral standard than the eternal law, the notion of “peace and human society” must ultimately be interpreted in light of Augustine’s earlier conclusion regarding the two-fold aim of political law. This conclusion explains Augustine’s later insistence on offering a *political* defense of Christianity: that is, a defense of Christianity on the political community’s terms, as contributing to the end that it strives to cultivate, and therefore as *deserving* a place within its life (most concisely, in *Letter* 138.9-17). The conclusion that politics is inseparable from virtue, and that the citizen’s task is ultimately to build up a society that is good as well as safe, thus appears to provide the common ground in on which a compromise between church and state can be struck. For Locke, on the other hand, that common ground was the insight that politics *is* separable from virtue, meaning that the two ends of politics that Augustine describes can be collapsed into one—the pursuit of comfortable self-preservation, which can be accepted by all (Locke 1983, 26).

The doctrine of eternal law is also only an imitation of the truth, and gives us an outline of the way virtue appears to a fundamentally decent person like Evodius. In doing so it also shows us how we must sharpen our questions to rise to a more adequate account.

It shows that our experience of virtue is closely tied to our sense that happiness is something that we must first be worthy of (1.14.101, 19-21; recall 1.13.94, 57-58 and context)—this is the deeper meaning of the identification of honorable and right conduct with wisdom and the importance of the cardinal virtues. It has also shown that our experience of those cardinal virtues is mediated through the laws of our community: while the virtues seem to bring with them their own criteria, it is hard to give an account of them that is neither circular nor tangled up in the authoritative pronouncements of political law. The discussion of eternal law brings to light the connection between the ideal of wisdom and the principle of honor, on the one hand, and the connection between the principle of honor and patriotism, on the other, although the precise grounds and contours of virtue as they appear in the light of truth remain mysterious.

We noted that in order to hold this view of eternal law and virtue together Evodius was forced to bend the truth at three points. First, he had to insist on the sovereignty of the will, which makes the good will possible at every moment. Second, he had to insist on the sufficiency of the good will and moral rectitude to gain happiness, thereby ignoring the problem posed by external goods. Finally, he had to insist that the principle of honor or rectitude provided a standard for the good will independent of human or divine authority. He thus appears to have the position that Augustine ascribes in *City of God* to “certain men, who think that the virtues are true and honorable when they are referred to themselves alone, nor are sought for the sake of anything else,” which virtues Augustine calls “puffed up and haughty and therefore not virtues, since what makes man happy must come from above him (19.25). On the other hand, the general and inchoate position Augustine leaves

for the reader appears to be quite similar to that of Varro and the Old Academy, whom Augustine praises: they held that virtue was the highest good of the soul, but had to be defined according to learning or wisdom (19.3, 26-7 and 46-7).

The state of the matter at the end of *On Free Choice* seems therefore very close to the state of the matter in Socratic political philosophy, which offered a critique of the moral or (merely) “political” virtue in light of intellectual or true virtue. And yet, however much Augustine agreed with this critique, he obviously resolved the problem caused by the ultimate dependence of moral virtue differently: he obviously conceived the fundamental datum (or *summum bonum*) giving definite shape to the virtues as eternal life, or communion with the God of the Bible (*City of God* 19.4, 1-6; 19.20, 12-16). This is clear in his presentation of the eternal law in *Contra Faustum*, to which we turn in the next chapter, where he defines the eternal law as “the divine reason or will of God, commanding that the natural order be preserved, forbidding that it be disturbed,” and defines the nature of man as an ascending hierarchy, from the body to the soul to reason, and from practical reason to contemplative reason, which looks to “the image of God” with the eyes of faith while on earth (22.27). The image of God is therefore the ultimate touchstone of morality, giving precedence to the theological virtues of faith, hope, and love (ibid.). And yet nature does not disappear, and Augustine appeals to it often in his justification of various actions that Faustus had blamed in the patriarchs. The purpose of the argument in *Contra Faustum* is to show how far the eternal law, understood as the will and reason of God (22.27), can be discerned by human reason in the order of nature.





## **Chapter 6**

### **Reasoning from the Eternal Law in *Contra Faustum***

We turn now to *Contra Faustum*, a work that has been little noticed by students of Augustine's moral and political thought, but which contains (in its twenty-second book) an extended discussion of the demands of eternal law. The goal of the argument is a vindication of the Old Testament patriarchs against the charge of injustice. This presentation of the eternal law differs from the presentation in *On Free Choice* in several crucial respects. In the first place, the argument is part of a polemical treatise, rather than a philosophic dialogue, and therefore is presented entirely in Augustine's name. This fact will allow us to trace how Augustine himself applies the precepts of the eternal law to particular cases. Second, the eternal law as presented here is explicitly theological: the eternal law is "the will and reason of God," rather than simply the "highest reason" (22:27; *On Free Choice* 1.6.48, 46).<sup>1</sup> If *On Free Choice* presents the eternal law as it bears on the dilemmas of a citizen, *Contra Faustum* presents it as it bears on the dilemmas of a Christian. The question here is not the ground of political obligation, but the ground of God's commands. Augustine's contention is that, at least in certain cases, this ground can be perceived in what he calls the "order of nature" (22.27). It is on these grounds that he defends the patriarchs against the attacks of Faustus.

We cannot consider the whole argument of Book 22, which is itself an exegetical *tour de force*. We must limit ourselves to the argument as it relates to our question, which

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<sup>1</sup> Citations to *Contra Faustum* will be given by section and paragraph number as found in the *CSEL* text (1891); where necessary, I will include page and line citations in square brackets.

is Augustine's conception of the eternal law and the fundamental criterion for politics and morality. We consider first Augustine's general statement on the eternal law, which he defines as "the will and reason of God" that commands the preservation of the "natural order" (22.27). This means that justice requires shaping all desire according to the "natural limit," which in the case of "mortal pleasures" is "mortal health" or safety (22.28, 29). Augustine then assesses the deeds of the patriarchs by comparing their intention with the ends that he deduces from this standard of health or safety. Over the course of the argument Augustine appeals to three broad ends—self-preservation, procreation, and civic peace. However, as we will see, these natural ends prove to be only the beginning points of Augustine's moral reasoning, since their pursuit is ultimately limited by other moral criteria. A consideration of these additional criteria reveals the limitations of Augustine's deductive eternal law argument and indicates the investigations we must undertake to grasp Augustine's conception of justice.

### 1. A Theological Eternal Law

As we noted above, Augustine begins his defense of the patriarchs with a general definition of sin, which he defines as "any deed, speech, or excessive desire contrary to the eternal law" (22.27 [621:12-13]). He defines the eternal law as "the divine reason or will of God, commanding that the natural order be preserved, forbidding that it be disturbed" [13-15]. What then is "the natural order in a human being" [15-16]? It is a ranking of the parts of which he "consists" [16]. First of all, the human being is composed of body and soul, like the beasts, of which the soul is undoubtedly the superior "according to the natural

order” [17-18]. The human soul differs from that of the beast, however, due to the presence of reason, which is again superior to the other parts of the soul “according to the law of nature”<sup>2</sup> [20-21]. Finally, Augustine distinguishes between “active” and “contemplative” reason, and says that the latter “undoubtedly excels” the former [22]. In contemplation is found “the image of God, by which we are reformed through faith unto sight,” and so “rational action ought to obey rational contemplation,<sup>3</sup> whether working through faith...or through sight”—that is, whether on earth, where we live by faith, or in heaven, where we will see God [25-27].

This definition of the eternal law differs in several ways from the definition in *On Free Choice*. There the eternal law was first conceived as the “highest reason,” the existence of which was most evident in the case of justified revolution (1.6.48, 46). Here Augustine identifies this “reason” with the will of God. And while the fundamental precept of eternal law in *On Free Choice* was that all things be “most ordered” (1.6.51, 64-66), the fundamental precept here is the preservation of the “natural order” (*City of God*, 19.15). While the definition of eternal law here is explicitly theological, Augustine’s emphasis on God’s reason as well as His will and the connection of the eternal law with an order of nature<sup>4</sup> suggests that the rules of true morality can be discerned by reason in the order and

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<sup>2</sup> The parallel usage of the phrases “according to the natural order” and “according to the law of nature” suggests that the natural order is the manifestation of the law of nature.

<sup>3</sup> This discussion is consistent with Augustine’s later definition of the peace of the rational soul as “the ordered concord of thought and action” (*City of God*, 19.13; 19.14).

<sup>4</sup> In *On Free Choice*, Augustine had expressed the fundamental precept of the eternal law in terms of order, without any reference to nature (1.6.48, 46; 1.6.51, 66; 1.10.71, 4-7; 1.14.101, 21-24; 1.15.108, 42-43). However, Augustine’s discussion of the “natural order” here includes the major points in the discussion of the “ordered human being” in *On Free Choice* I (1.7.52, 1-2). Here we have again a ranking of the parts of the human being, with contemplative reason in command, arranging everything under it in accord with what it sees. And in *On Free Choice* Augustine had indicated the connection between order and nature, when he remarked that he who judges “correctly according to human nature” will see that laughing or joking is a low

structure of the world, even if the origin of those rules is act of God's will. However, his outline of the natural order in human beings here culminates in the contemplation of God's image, which reforms us "through faith." Augustine's language here is ambiguous: is the contemplation of God's image an act of natural reason, or must God disclose it to us? What does it mean to take the image of God as the fundamental datum of morality?

In the first place it seems to mean that the theological virtues of faith, hope, and love are the manifestations of the natural order on earth, since they manifest human beings' obedience to God, the highest being in the universe. As Augustine explains, in contrast to the angels, who do what God commands while contemplating Him perfectly,

We, whose body is dead on account of sin, before God quickens us and our mortal bodies through the indwelling of His spirit in us, live justly according to the eternal law by which the natural order is preserved, in the small measure allowed by our weakness, if we should live from a **faith** unfeigned that works through **love**, having in good conscience a **hope** reposed in heaven of immortality and incorruption and the very perfection of justice unto a certain unspeakably sweet abundance, to hunger and thirst for which is proper in this pilgrimage, so long as we live by faith, not by sight (22.27; emphasis mine).

However, when Augustine goes on to speak of "human action that serves faith," he returns to the language of nature. He says that this action "curbs all mortal pleasures [*mortales delectationes*] and restrains them unto a natural limit [*naturalem modum*], putting better things before lesser ones from an ordered love [*ordinata dilectione*]" (22.28 [622, 17-20]).

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part of man (1.8.63, 22). "Human nature," then, appears to be a particular manifestation of order, a particular arrangement of parts of which the human being "consists" (1.8.61, 5). He had also referred to "whatever nature that lawfully excels a mind in possession of virtue" (1.11.75, 41-42); earlier, he had given as an example of "believing best" concerning God that "he had no help from nature in creating, as if he did not suffice for himself" (1.2.12, 28-30).

Thus we come back to nature as the measure for faith as well as love, the greatest theological virtue.

Augustine does not resolve this circularity. His most specific remark on the standard of eternal law is that “mortal pleasures must be stirred up or indulged to the point of preparing or preserving the mortal health [*mortalem salutem*]<sup>5</sup> of each individual human being or of the human race itself” (22.29 [623, 16-19]). It is not clear what the adjective “mortal” is meant to distinguish—if, as seems most likely, Augustine means to distinguish the pleasures and health that are proper to mortal, as opposed to immortal, beings, he must mean the pleasures and health of the body. Alternatively, drawing on the Christian understanding of *salus* as “salvation,” Augustine could mean to distinguish the pleasure and health that human beings experience in this world from the “everlasting salvation” of the next world. In either case, the role of mortal “health” or “safety” in the argument is to provide a clear and non-objectionable touchstone for the “natural” that can be used to discern God’s will or justify His commands without appealing to divine authority.

This question of the standard is particularly important, since the picture of human life that Augustine paints here is quite severe. While Augustine speaks of human beings as “sharers” in the eternal law, as Thomas Aquinas will later do (*Summa Theologiae*, I-II, Q. 91, a.2), he does not speak of an order of natural inclinations parallel to the order of precepts of the eternal law (ibid., Q. 94, a.2). Instead, he stresses the fact that our love does not correspond to the natural hierarchy of goods. We are delighted by what is forbidden us—that is, what “that law prohibits by which the natural order is preserved” (22.28). Here

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<sup>5</sup> *Salus* can also be translated as “safety,” or even “salvation.” I will translate it as “health” or “safety” as the context demands.

Augustine offers another definition of sin: someone sins “who indulges [*relaxat*], rather than restrains, the pleasure of the forbidden” (ibid.). There is therefore a clear division between what is merely delightful, or what attracts us spontaneously, and what is strictly natural. Augustine contrasts the human condition with that of angels and beasts: angels share in the eternal law by receiving and obeying God’s commands, but only His commands delight them, while beasts are moved by the eternal law without becoming “sharers” [*particeps*] in it. The human being does share in the eternal law, but must do so in the face of opposition from his desires. This necessity of “curbing pleasure in what is forbidden” contributes to the greatness of the “human creation,” since the possibility of failing to restrain implies the possibility of succeeding (22.28). The misery and greatness of man have the same root—the necessity of comparing what is right with what is merely pleasant or enticing.

In the cases that follow Augustine will (with a few exceptions) assess the deeds of the patriarchs in the light of eternal law. The majority of examples concern marriage and war. In these cases, Augustine explicitly derives two broad ends from “mortal health”—procreation and public safety—by means of which he defends the actions of the patriarchs. In one case, when Augustine defends Abraham’s deception regarding his marriage to Sarah, Augustine’s argument relies on deriving self-preservation as a legitimate end. The argument thus proceeds by tracing the intentions and actions of the patriarchs to one of these natural ends. However, as we will see, in none of the cases is the pursuit of these natural ends alone sufficient to justify action.

## 2. The case of Abraham—offspring and self-preservation

Augustine begins with Abraham, whom Faustus had charged first with “burning with an insane desire for offspring” and “trusting least in God, who had promised him this from Sarah his wife,” in his relations with Hagar (22.5, 22.30; Genesis 16:1-4). To this Faustus had added the charge of being “a most infamous traitor to his marriage,” who “on account of greed and hunger” lied to the two kings, Abimelech and Pharaoh, saying that Sarah was his sister, rather than his wife (ibid.; Genesis 12:10-20; 20:1-7). Augustine’s uses similar arguments in answering each charge. In exonerating Abraham of the first charge, Augustine begins by drawing from the identification of natural order with the “health of the race” the conclusion that sexual intercourse is permitted for the sake of procreation (22.30 [624:12-16]). In exonerating Abraham of the second charge, Augustine defends Abraham’s attempt to preserve his own life; while he does not make an explicit deduction from the eternal law, the argument obviously depends on taking self-preservation as a reasonable end because conducive to the “health of a human being” (22.29). In both cases, however, these broad ends that serve as the touchstones of what is natural and healthy—procreation and self-preservation—are only the beginning points for an evaluation of Abraham’s actions.

a. Augustine first takes up Abraham’s relations with Hagar. He begins with a statement about how the eternal law bears on the matter:

That eternal law, that is, the will of God, founder of all creatures, that advises [*consulens*] the preservation of the natural order, permits the delight of mortal flesh in sexual intercourse to be indulged, under the mastery [*dominatu*] of reason, only for

generating offspring [*ad prolem tantummodo propagandam*], in order that there may not be service to lust, but regard for the health of the race (22.30).

The most important part of this statement is Augustine's claim that the eternal law and natural order consider sexual intercourse only in light of the "health of the race," and therefore only permit it for procreation. This is therefore what reason demands in sexual relations, and anything further can only be attributed to lust. Augustine then defends Abraham by attributing his relations with Hagar to his intention for offspring alone, which "preserved the order of nature" (22.30). He attributes to Sarah the same intention. "Knowing that she was barren," Augustine says, "she claimed, by a power permitted to her, the fecundity of her handmaid's womb for the use of her own right" (22.31). Besides this power of surrogacy, Augustine claims, Sarah had the "power" that Paul says spouses have over one another's bodies (I Corinthians 7:4). Augustine takes Sarah's command to Abraham to have intercourse with Hagar as evidence of her good intentions: "never would a woman have done this, if she were filled with carnal concupiscence for her man's body; for she would rather have been jealous of her handmaid, than have made her a mother" (22.31).

Augustine admits that neither Abraham nor Sarah could be defended if the actions of either one indicated a lack of faith in God's promise. However, he points out that at this point in the story God had not yet promised Abraham that his offspring would issue from Sarah, but only that he would himself have an heir (22.32; compare Genesis 15:4-6, 13, 18 with 17:15-19). Faustus thus either "is deceived imprudently or deceives impudently" (22.32). Augustine concludes that Abraham at that time knew only that he had from God



a promise of land and seed and that his wife was barren, and he “did not yield to his carnal desire, but complied with his wife’s conjugal power” (22.32). His action was therefore justified in the eyes of the eternal law.

However one might quibble with Augustine’s exegesis, his defense makes something clear about his conception of the eternal law, the fundamental standard of morality. He says that, with respect to sexual relations, the relevant natural end is the health of the human race, and therefore the propagation of offspring, and that any relations beyond that purpose belong to lust, rather than reason. However, Augustine’s insistence that Abraham proceeded on Sarah’s command points to another end besides the generation of offspring: preserving the “power” or right of each spouse over the other’s body. By stressing that Abraham acted on Sarah’s command, Augustine indicates that this right, associated with the marriage covenant, sets limits even to the pursuit of offspring. Augustine defends the pursuit of offspring only within the bond of marriage: Abraham would not have been justified in deciding on his own to have children by Hagar. As Augustine proceeds to other examples in this vein, we will trace the development of these further limitations on the procreative end. While procreation remains the fundamental starting point, it is circumscribed by other ends that give shape to the pursuit of procreation and sexual intercourse. This argument sets a pattern for the remaining cases: the natural end that Augustine deduces in order to defend the patriarchs is always qualified by other moral criteria. We must then consider the source and status of these additional criteria.

b. The second charge brought against Abraham concerns his betraying his marriage to Sarah by twice lying about their marriage in foreign lands (Genesis 12:10-20 and 20:1-18). While Faustus had attributed his deception to “greed and appetite” (22.5), Augustine says that Faustus failed correctly to distinguish “honor from baseness [*honestatem ab turpitudine*]” (22.33). Because they are unable to discern good deeds from sins “in the light of that eternal law,” Faustus and those like him confuse “obstinacy” with “constancy” and the vice of “boldness” with the virtue of “trust” (ibid.). Augustine will argue that the openness and frankness they demand of Abraham is not virtue, but vice.

In this case Augustine does not begin by saying what the eternal law demands. He begins from Abraham’s motives. He says that Abraham concealed his marriage “in order that [Sarah] might not be captured and possessed after he had been killed by foreign and impious men, certain that his own God would not permit her to suffer anything base and disgraceful [*turpe ac flagitiosum*]” (22.33). This faith, Augustine says, was justified, as both Pharaoh and Abimelech restored Sarah to him unharmed. At this point, it seems like the case is parallel to Sarah’s command that Abraham sleep with Hagar: just as Sarah had earlier, so now Abraham acts in a way that seems to betray his marriage, but is justified by the end that compelled him to do what he did. In Sarah’s case, this end was procreation; here, it is the preservation of life and purity.

Augustine admits that Abraham would have sinned if his only motivation had been a weakness of faith and a fear of death, as when Peter denied Jesus (22.34; Matthew 26:70ff.). However, he insists that there is another possible interpretation of Abraham’s actions. First, he points out that Abraham never explicitly denied that Sarah was his wife,

and that the scriptures are not clear regarding Sarah's family (Augustine speculates that she really may have been a half-sister from his father, as Abraham says when Abimelech returns her) (22.35; Genesis 20:11-12). He thus sidesteps the charge that Abraham lied in order to save his life. As for Abraham's faith, and the charge that he should have had confidence in God to protecting his life and Sarah's purity, Augustine says that "it pertains to healthy doctrine 'not to tempt the Lord your God' when a human being has something that he may do" (22.36). He cites the examples of Jesus, who escaped and concealed himself a number of times before "it was fitting for him be killed at the opportune hour" (John 7:10, 30), and of Paul, whose faith in God did not preclude his plotting to escape from his enemies (Acts 9:25). In Paul's case, Augustine goes so far as to say that "he did not tempt God by fleeing in this way, but rather would have tempted Him by not fleeing, since he had the power to flee" (22.36).

What then was Abraham able to do? Augustine again reviews the facts of the case:

Among unknown men Sarah's outstanding beauty put both her purity and her husband's life in danger, nor was Abraham able to defend both. He was, nevertheless, able to defend one of them—that is, his life. Lest he tempt his God, he did what he could; but what could not, he committed to Him. Therefore, he who could not hide that he was a human being, hid that he was a husband, lest he be killed; he entrusted his wife to God, lest she be polluted (22.36).

Augustine thus makes clear that Abraham in the end acted to save his own life, and he stresses the necessities that constrained Abraham from acting on anything more than that: while he acted to save his life, he did so because that was the only good in his power to preserve. Augustine does not indicate that his action further endangered the other good under consideration, Sarah's purity. Therefore it seems that courage and faith are

compatible with saving one's own life, and even concealing something about oneself in order to do so, at least as long as one's efforts at preservation do not prejudice other goods in one's care. Abraham's candor would have been an example of stubbornness, not true constancy, and boldness rather than true confidence, since he would have endangered his life without protecting his wife's purity. True confidence in God means trusting to God only what one cannot do oneself.

Surprisingly, Augustine never appeals to the eternal law in discussing this case. It does not seem difficult to imagine the relevant deduction: the defense of one's own life is a natural and legitimate end as the first element of "the health of a human being" (22.29). Why then does Augustine not say so? The argument suggests that the pursuit of this end, while reasonable, is subject to many qualifications. This is clearest in Augustine's emphatic rejection of the fear of death as a justification for Abraham's actions (22.34 [628:6]). He also indicates that self-preservation could be qualified by consideration of other ends in one's care (in this case, Sarah's purity). Furthermore, Augustine's insistence that Abraham failed only to tell the whole truth, rather than lying outright, raises the question whether one could lie in order to preserve oneself. A final point in the discussion does bear on the question of permissible means. Augustine raises the question whether Sarah could have had intercourse with other men, with her husband's knowledge and command, in order to save his life (22.37). He points out that Abraham was no adulterer in sleeping with Hagar, since he obeyed his wife in order to have offspring—that is, he departed from the strict rule of sexual faith in order to pursue a legitimate end with his wife's consent. However, Augustine resists this possibility, saying that "much more truly

and honorably do we accept this, that father Abraham did not tempt God, when as a human being he considered his own life, as much as he was able, and hoped in God, to whom he commended his wife's purity" (22.37). He gives as his reason for resistance "the force of principles" (*vim principiorum*), meaning the difference between a woman having relations with two different men and a man having relations with two different women (*ibid.*). It is not immediately clear what Augustine is driving at, but there obviously would have been a danger of Sarah conceiving with another man in addition to the physical danger of such a course (cf. *On the Good of Marriage*, 20). This discussion may also illuminate the question of lying, since here Augustine tests a strict moral rule, asking whether a legitimate end might justify setting it aside in some cases. He ultimately maintains the rule, but on the grounds that breaking the rule would probably lead to greater harm, due to certain features in the human constitution or human nature.<sup>6</sup>

In summary, Augustine argues that acts of self-preservation are compatible with the eternal law, but are subject to certain limits. Here, Augustine implies that Abraham's efforts to save himself did not increase the likelihood of his wife being violated; works to deny that Abraham lied<sup>7</sup>; and ultimately denies that Sarah could have slept with another

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<sup>6</sup> In *On the Lord's Sermon on the Mount* Augustine reports the case of a woman who has sexual relations with a rich man in order to pay her jailed husband's debt to a tyrannical magistrate, and neither condemns nor praises it (1.16.50).

<sup>7</sup> Augustine is famous for his teaching against lying, and even devoted two treatises to the subject (*On Lying; Against Lying*). However, John von Heyking has marshaled evidence that Augustine in fact did admit of exceptions to this general rule in his earlier work, which he never retracted (*Retractationes* 1.26; von Heyking 2001, 114-120). According to von Heyking, Augustine admitted that lying was justified to prevent someone from "defiling" or violating" another (2001, 118, 119). Only a close examination of those works would allow us to say how those exceptions bear on the question of self-defense.

man in order to save his life.<sup>8</sup> These qualifications perhaps explain Augustine's reluctance to appeal directly to the eternal law in this case.

### 3. On procreation, marriage, and human society (Lot, Isaac, Jacob, Judah)

Augustine resumes the argument regarding marriage and procreation in his discussion of Isaac, Lot, Jacob, and Judah. Regarding Lot, whom Faustus had accused of being "inflamed with forbidden lust" in lying with his daughters (22.5; Genesis 19:29-38), Augustine agrees that the deed was wicked. However, he thinks Faustus puts too much blame on Lot and his daughters, since he has failed to acknowledge their true motives. If the eternal law is "consulted," Augustine insists, Faustus will find that it does not judge the matter as if Lot were "inflamed with ungodly lust for his daughters," or as if his daughters were "burning with execrable love for their father's flesh" (22.43 [635:14-18]). And since "the principle [*ratio*] of justice considers not only what was done, but also why it was done," they are not as unjust as Faustus says (22.43 [635:19-21]).

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<sup>8</sup> Augustine does not raise the question here of whether it is permitted to kill another person to preserve one's life. In his correspondence he rejected the "counsel" that one can kill another person simply to avoid being killed unless one is constrained by a public office to act on that principle (*Letter* 47.5). However, Augustine also says that we shouldn't take the counsel to "resist not evil" to mean people should neglect the correction of injustice (*ibid.*). It would seem then that the only possible grounds on which Augustine could admit killing in self-defense would be if one's intention were the prevention or correction of a genuine injustice, rather than simply saving one's life, and if one's action could be understood to be analogous to the actions of the legal authorities who are permitted to use lethal force. The fact that, as Augustine points out, "no law" condemns those who kill another to defend "life, liberty, or purity" (*On Free Choice* 1.5.39, 57-58), which implies that the "power" to repel crimes is essential to the peace of every community (1.5.33, 12), seems to make the latter analogy possible. However, there is no passage that I know of in Augustine's writings where he makes such an argument in his own name. Aquinas interprets Augustine to forbid only the specific intention "to kill a human being in order to defend oneself," which he permits only to soldiers and ministers of the law, as distinguished from the intention to preserve one's own life (*Summa Theologiae*, II-II, Q.66, a.7).

This sounds very similar to Augustine's defense of Abraham and Sarah earlier, where he defended an action that seemed to offend against marriage by sifting their true motives and finding them innocent. Here, however, he merely softens the harshness of Faustus' judgment. He imputes to Lot's daughters the thought that the conflagration at Sodom had spread over the whole earth, and says they "sought to preserve the offspring of the race, which was in them a human and natural disposition [*affectus*]" (22.43 [635:21-23]; *On the Good of Marriage*, 22). Nonetheless, even this perfectly natural disposition does not excuse them, since "they ought rather never have been mothers than have used their father so" (22.43 [635:26-27]; cf. *Confessions* 3.8.15, 7). And so their true motive only lessens, rather than eliminates, their guilt. As for Lot, Augustine says that he is most to be blamed for his drunkenness, "which the eternal law condemns, since it does not admit food and drink to the natural order except for the sake of preserving health" (22.44 [636:8-10]).<sup>9</sup>

The qualified defense of Lot and his daughters builds on the defense of Abraham and Sarah in at least two ways. First, while it formulates the desire for children in a more direct way, as "an altogether human and natural disposition," and thereby strengthens it as a touchstone of morality, it also sets clear limits to the pursuit of this end, indicating that in certain circumstances one ought rather to forgo parenthood and restrain this perfectly natural desire. This thought was only implicit in the defense of Abraham and Sarah, in the discussion of their "power" over one another, which restricted the procreative impulse

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<sup>9</sup> This statement shows just how severe this presentation of the eternal law is, at least without admitting some more expansive sense of "health." To be parallel to the teaching concerning procreation and self-preservation, it would have to include the qualification that, while taking nourishment is blameless, one could not simply do anything to avoid starvation, as Augustine argues at *On the Good of Marriage*, 18.

according to the rules of marriage. Second, this defense presents a moral rule that truly admits of no exceptions, which ought to be compared with the account of lying and adultery in the discussion of Abraham's concealing his marriage. Augustine had carefully extricated Abraham from the charge of lying, and had eventually denied that Sarah could have slept with another man to save Abraham's life, but the conclusions were not absolutely clear. Here, however, the prohibition of incest admits of absolutely no exceptions, even for those who believe that they may be the last people on earth.

After Isaac<sup>10</sup> follows Jacob, whom Faustus had blamed for having four wives and "wandering among them like a he-goat," thereby causing them to quarrel and even bargain for his attention (22.5 [594:21-24]). Augustine begins with a general defense of polygamy, arguing that the pursuit of offspring in this arrangement is not contrary to nature, like incest (Clark 1986, 147). In order to make his defense of Jacob consistent with Christian monogamy, he brings in other considerations beyond nature, saying that there are sins against nature, customs (*mores*) and commands (*praecepta*) (22.47 [639:7-8]). Polygamy is consistent with nature when entered into for the sake of procreation, consistent with custom when it is long practiced in a place, and consistent with command when no law of God forbids it. Augustine says that polygamy is a crime today not because it is forbidden by nature, but "because customs and laws [*legibus*] do not permit it" (22.47 [639:13-15]). These considerations are no less binding, however, since "whoever treats these two things

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<sup>10</sup> Regarding Isaac, whom Faustus had blamed for lying about Rebecca just as his father Abraham had lied about Sarah (22.5 [594:19-21], 22.46 [637:19-21]; Genesis 26:6-11), Augustine says that he would offer the same defense of the son as he had offered for the father, with the additional piece of evidence that Rebecca can truly be said to be Isaac's sister, on account of the closeness of their blood relationship (22.46 [637:21-23]; Genesis 24:4, 15).



with contempt, even if he can enjoy many women for the sake of procreation alone, nonetheless sins and violates *human society itself*, for which the propagation of children is necessary” (22.47 [639, 15-18]; emphasis mine).

This last statement is the clearest yet that the end of procreation is ultimately subordinate to a more important human concern—in this case, what Augustine calls “human society” (cf. *On Free Choice* 1.15.108). Procreation therefore finds its proper place as a necessary precondition for human society, which in turn determines how procreation takes place. Since procreation was previously drawn from the end of the “mortal health” of the human race, we can assume that “human society” somehow lies between procreation and the overall end of mortal health that was given as the ultimate measuring rod for all “mortal pleasures” (22.29). The health of the race requires a certain order of society to which marriage and procreation must conform.

Augustine traces Faustus’ and others’ blame of polygamy to a false deduction from their own experience. They look only at their contemporaries, with their different customs and laws, where they see that “human beings are unable to be delighted by a multitude of wives except from a magnitude of lust,” and so think that it is impossible to have many wives without “blazing with carnal concupiscence and sordid pleasure” (22.47 [639:18-22]). Augustine declares that such immoderate men should not be judges of the saints, just as the feverish should not be judges of food’s sweetness or healthfulness; for only someone with a healthy sense and medical knowledge can judge of proper nourishment. Augustine suggests that they instead look to the scriptures, believing

that such great honor of sanctity is not given to men having many wives, unless it can happen that the soul, the commander of the flesh,

possesses so great a power of moderation that it does not permit the motion of genital delight, present in the nature of mortals by providence, to exceed the laws set down for generating (22.48 [640, 9-16]).

Augustine says the judgment of Faustus and others is the same as assuming that the holy apostles preached the Gospel to so many nations, “not from a love of generating children of eternal life, but out of a desire for human praise” (22.48 [640, 16-19]). Augustine acknowledges that there are plenty of glory-seekers in the Church, but denies that the apostles were such people. He therefore draws the conclusion that

just as the holy apostles delighted in their doctrine together with their admiring hearers not from eagerness of gaining praise, but from love of sowing the truth; so the patriarchs mixed their seed with their spouses not from an excessive desire for pleasure, but from the foresight [*providentia*] of prolonging their succession (22.48 [641, 17-22]).

Augustine includes the patriarchs’ wives in this statement, insisting that they also sought offspring only from their conjugal union, since they were willing to give their handmaids to their husbands in order to become mothers “not in the flesh, but by their will” (22.48 [641:26-29]).

But even if polygamy is consistent with human society in principle, since it finds a sanction in nature, does it not encourage rivalry and disorder in practice? Augustine insists that there was an “arrangement” [*ordo*] among Jacob and his wives, since there was no “lust,” and that “the rights [*iura*] of conjugal power were preserved the more firmly the more chastely that injuries [*iniuria*] were avoided” (22.49 [642:15-17]). He takes the bartering between Leah and Rachel as evidence that such an order existed, from which Jacob must have temporarily deviated in going to Leah, rather than Rachel. He says that

Rachel's pact with Leah was consistent with the power Rachel had over her husband's body, and denies that Jacob never would have gone to Leah otherwise; he observes that Jacob had children by her previously and, in obedience to her, by her handmaid, and that he would go on to have more children by her. Had Jacob been such a man as Faustus claims, Augustine says, surely he would have stayed with Rachel, who was more beautiful and whom he loved more, and whose turn it was "by right of order" (22.50 [643:18]. Instead, Jacob was a "most moderate man," who enjoyed his wives as a man (*viriliter*) while remaining the master of carnal delight, and looked more to what he owed than to what he was owed him (22.50 [643:24-644, 4]). Augustine calls him "a just and provident father," who saw his wives concerned with offspring and sought nothing else in intercourse with them, thereby exercising "this perfect modesty, this control of concupiscence, and only the appetite for human posterity in the commingling of spouses" (22.50 [644:10-12]).

Again, however one might quibble with Augustine's account of Jacob and his wives, his defense does bring out his view of polygamy and its relation to the eternal law. He says it is not contrary to nature, since it can happen consistently with "the one honor of nuptial congress, by which males and females are joined for the sake of procreating children" (22.50; cf. *On the Good of Marriage*, 1). However, while the end that makes marital relations praiseworthy—procreation—is more evidently served in polygamy than in monogamy, polygamous marriage can be pursued only where it is consistent with the laws and practices that uphold "human society." These social limitations to procreation receive a final formulation in the discussion of Judah and Tamar that follows.

Faustus had accused Judah of visiting prostitutes and sleeping with his daughter Tamar (Genesis 38: 12-26). Augustine readily grants these, and adds that he sold his brother Joseph into Egypt (22.61 [656:15-16]; Genesis 37: 26-27). He only denies that the scripture itself is sullied by shining its light upon wicked deeds. He begins by consulting again the eternal law:

The eternal law, which commands that the natural order be preserved, forbids that it be disturbed, has laid down that sexual intercourse happen only for the sake of continuance, **and this only within a socially ordered marriage** [*et hoc non nisi socialiter ordinato conubio*] **that does not overturn the bond of peace** [*vinculum pacis*]; and for this reason the dishonoring of women, who are used not for substituting offspring, but for satisfying lust, is condemned by divine and eternal law (22.61 [656:19-25]; emphasis mine).

Judah therefore certainly sinned in sleeping with a prostitute, since “venal baseness dishonors each buyer,” although he is not guilty of incest, since Tamar was disguised. Like Lot, he did not desire his daughter; unlike Lot, he was not drunk. As for Tamar, Augustine implicitly groups her with Lot’s daughters, since she seems to have desired only “offspring from the very blood that she had been denied, having married two brothers already and being denied the third” (22.61 [657:5-7]). She therefore used fraud to conceive by her father-in-law and received from him not a prostitute’s reward, but pledges of his paternity. Nevertheless, Augustine concludes that “better had she remained without sons than become a mother without right” (22.61 [657:10-11]). While Tamar is less to be blamed than her father-in-law, she is still a sinner according to the “eternal law of justice, which forbids that the natural order be disturbed, not only of bodies, *but most and first of all of souls* [*sed*

*maxime ac primitus animorum*], since in procreation she did not protect an ordered society [*ordinatam societatem non custodivit*]” (22.61 [658:1-4; emphasis mine).

This last formulation makes clear that it is the needs of the soul that provide the ultimate rule in human action, despite Augustine’s initial orientation by the procreative impulse. The natural order is not simply what is most instinctual or common to animals, but what meets the needs of the soul, which requires a certain order of human society. We have seen these criteria emerge in the four examples Augustine has discussed here. In the case of Abraham and Sarah, sexual relations are for procreation, but that procreation had to occur in compliance with conjugal right. In the case of Lot and his daughters, the desire for offspring is a “human and natural disposition,” but could not be pursued incestuously (22.43). In the case of Jacob and his wives, offspring could be pursued in polygamy, but not where human society forbids it, whether by custom or divine law. These points are summed up in the case of Judah and Tamar: “continuance” is a perfectly valid human concern, but can be sought only in “a socially ordered marriage” that preserves “the bond of peace” (22.61). Augustine appeared then to sum up all these qualifications on the pursuit of the procreative impulse by saying that the natural order encompasses the order not only of bodies, but of souls as well. The obvious natural ends, like procreation, are therefore the beginning points of morality, but they are not sufficient to determine it without reference to other human needs, since they are subject to a higher right. Augustine’s series of qualifications indicates the ultimate primacy of the soul to the body and virtue to what is natural in the sense of spontaneous or original (see again, 22.28).

If this is the case—if, that is, the needs of the soul and a certain kind of human society truly define “mortal health”—why does Augustine interpret nature and health so narrowly to begin with, restricting sexual relations to the sole intention to generate offspring? Such an interpretation seems to elevate biology at the expense of psychology and reproduction at the expense of companionship and marital friendship (Hugo 1969, 121-122; Clark 1986a, 139, 153, 157). Augustine has long been criticized on the grounds that he considered sexual relations in themselves to be sinful (Clark 1986b; Kelly 1983, 82, 109-110; Bruno 278-285; see references at Lamberigts 2000, 175, 186-187). Brown speaks for many critics when he says that Augustine “never found a way of articulating the possibility that sexual pleasure might, in itself, enrich the relations between husband and wife” (Brown 1998, 402; see also Reynolds 1994, 258 and Bonner 1986, 375-376).

Augustine does not give a reason for his particular deduction from the natural order and the eternal law in *Contra Faustum*. We do know that he maintained this strict view throughout his whole career, even when discussing marriage from the point of view of the individual spouses (Lamberigts 2000, 181).<sup>11</sup> His argument in *On the Good of Marriage*,<sup>12</sup> written around this time (Walsh 2001, ix, note 2 and 148, note 2), also depends on the fundamental assertion that “the *one* honorable [*honestus*] fruit of sexual relations between male and female” is “the consequent connection of society in children” (1, emphasis mine; *Contra Faustum* 22.50). Augustine also repeats the claim that sexual intercourse is properly for the health of the race, just as food is for the health of the individual, and that

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<sup>11</sup> The best introduction to Augustine’s various writings on marriage (apart from *Against Faustus*) and their context in Christian history is Elizabeth Clark’s *St. Augustine on Marriage and Sexuality* (1996, 1-12).

<sup>12</sup> For the Latin text of *On the Good of Marriage* I have relied on the bilingual edition of P.G. Walsh (2001). Citations refer the Arabic paragraph numbers in that text. Translations are my own.

it becomes lustful when it proceeds “beyond the necessity of generation” (11; 18; 34; *Against Faustus* 22.48; Hugo 1968, 114-115; Van der Meer, 184). However, Augustine does not reduce marriage to the cause of procreation, as he seems to do in *Against Faustus* (3).<sup>13</sup> He begins his argument by observing the “great and natural good, and also power [*vim*], of friendship” in human beings, including friendship between husband and wife (1; Clark 1986a; Brown 1988, 403; Reynolds 1994, 252-3). This good is certainly expressed in their “consequent connection of society in children,” but it is first of all expressed in “a certain friendly and fraternal conjoining in each sex, of one ruling, the other obeying,” or what Augustine calls “the natural society of the different sexes itself” (1; 3).

However, Augustine conceives of this connection between the spouses in spiritual terms (Reynolds 1994, 241, 253)—as an “order of charity between husband and wife” that is better as the spouses approach continence (3; 15; Hugo 1969, 137-138, Van der Meer, 250). The sexual bond is therefore not the essence of marriage for Augustine (cf. *On Marriage and Concupiscence*, 1.12; Reynolds 1994, 254-5; see references at Brown 1988, 404n68). The most he will grant to the notion that sexual relations themselves enrich the life of the spouses is to acknowledge the role of those relations in the regulation of concupiscence. Yet this means saying only that in certain contexts sexual intercourse can be indulged in such a way that it lessens the problem of concupiscence that it typically creates: it can thus be “medicinal” or “remedial” (Reynolds 1994, 260, 273; Hugo 1969,

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<sup>13</sup> He says that, historically speaking, “nuptials themselves are for the same cause in all peoples, that of procreating children: “whatever sort they were afterwards, these nuptials nevertheless were instituted in order that [children] be born in an honorable and orderly way” (19).

130). That context, for Augustine, is a marriage in which the spouses welcome offspring and maintain faith.<sup>14</sup>

In the cases of both offspring and faith, the principle of “honor” is an essential element. Regarding offspring, Augustine says that

Marriages also have this good [beyond the society of the sexes], that carnal or youthful incontinence, even if it is a vice, is redirected to the honor [*honestatem*] of propagating offspring, so that from the evil of lust conjugal coupling brings about something good; and then that the concupiscence of the flesh, which the parental disposition tempers, is repressed and in a certain way burns more modestly [*verecundius aestuat*]. For a certain seriousness enters into the fiery pleasure, since in clinging to one another as husband and wife they also ponder that they are father and mother (3).

And regarding faith, which Augustine calls “a great good of the soul” that takes precedence over “bodily health” (4), he says that

In the nuptials [of those who indulge sexual relations without necessarily desiring children] there is this good—that they are nuptials. For this is the reason for nuptials: that concupiscence, having been withdrawn unto a lawful bond, might flow in a less deformed and dissolute manner, having in itself the unbreakable weakness of the flesh, but having from nuptials the indissolubility of faith; having in itself an immoderate progression to coupling, but having from nuptials a chaste way of procreating. For even if it is base to want to enjoy one’s husband lustily, it is nonetheless honorable not to want to mix with anyone but one’s husband, nor to yield to another besides him (5).

In both cases, the regulation of concupiscence is tied to honor, as expressed in dedication or devotion, whether to one’s spouse or to one’s family (Hugo 1969, 128). This dedication evidently ameliorates the concupiscence that normally arises in sexual relations. Following

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<sup>14</sup> For Christians, the context also includes the sacrament, or the mystery that attends the divine institution of marriage (7; 17; 21; 32). This good belongs only to the “people of God,” although non-Christians also have some sense of the mystery surrounding the nuptial bond (7).



Paul, Augustine excuses sexual relations that go beyond the intention for procreation, provided that they occur in this context, where the spouses “love more what is honorable than what is dishonorable in their union,” embracing the goods of offspring and faith and using their marriage to combat vice (6; 11; 15; 18; 1 Corinthians 7:6; Hugo 1968, 116-118; cf. Reynolds, who, like other commentators, passes over the importance of honor in remedying concupiscence [1994, 274-279]). In sum, Augustine believes that “the glory of marriage” or “the task of nuptials” is “chastity in procreating and faith in returning the carnal debt” (12; cf. *Confessions* 6.12.22, 34-35): for him, the procreative and “companionate” aspects of conjugal relations are inseparable, and sexual relations do not take on a romantic significance all their own (Clark 1986a, 139).

*On the Good of Marriage* makes it very clear that Augustine’s sees marriage in light of the ideal of “continence” or abstinence (Lamberigts 2000, 184-185). The task of Augustine’s treatise as a whole is to praise marriage while admitting the superiority of continence, as reflected in the words and example of Jesus and Paul (15; Matthew 19:10-12 and I Corinthians 7:1-9; Brown 1988, 402; Reynolds 1994, 250, 259, 273; Clark 1996, 1-2).<sup>15</sup> He argues that marriage is good for those who “so to speak ascend” into it “by the step of honor,” while insisting that the ultimate good that marriage serves—friendship, “friendly society,” or “human society”—is better served by those who do not need to marry (6; 9; 18; 19). He therefore insists that sexual relations are not in themselves a natural need, denying that human life is deprived of anything essential in foregoing those relations. The examples of Jesus and Paul and the use of their teachings suggest that this “ascetic

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<sup>15</sup> In a later work on marriage Augustine also draws heavily on the example of Mary and Joseph (*On Marriage and Concupiscence*, 1.12).

preference” is ultimately a religious conviction (Clark 1989, 29). This would suggest that Augustine’s interpretation of the demands of nature depends upon a view of human nature as taught by divine authority. Is the ideal of continence ultimately a religious ideal in Augustine’s thought?

We know from his account in the *Confessions* how important continence was to Augustine. “Continence herself” even appears and speaks to Augustine in the episode immediately preceding his dramatic conversion (8.11.27). We also know that the issue ultimately presented itself as a contest between God’s “sweetness and beauty” and his love of women and that Christian examples and authorities proved decisive in that struggle (8.1.2, 23-34; 8.11.26, 18-20; 8.11.27, 35-36; 8.12.29; 9.1.1, 14-22). However, the *Confessions* includes several non-Christian and even non-theological precursors to this ultimate conflict that may help us understand Augustine’s elevation of continence and his suspicion of concupiscence.

The close connection between Augustine’s desire for friendship and his desire for wisdom and the conflict between these two desires and his carnal concupiscence are two great themes in the *Confessions* narrative. At the beginning of Book 2 Augustine says that his adolescence was beset by concupiscence, when nothing delighted him “except to love and be loved”: but he failed to hold to the “luminous path of friendship,” since concupiscence of the flesh prevented him from discerning “the serenity of love from the fog of lust” (2.2.2, 1-6). Book 3 opens with his coming to Carthage, when he “did not yet love, but loved to love” and sought what he might love: but, loving more those whose bodies he could enjoy, he “polluted the vein of friendship with the dirt of concupiscence

and sullied its naturalness [*candor*] with the hell of lust” (3.1.1). This is contrasted with his discovery of Cicero and the “concupiscence for wisdom” that then burned in his heart (3.4.7, 9). Book 4 begins with the story of his taking a concubine, whom he says “a wandering passion devoid of prudence” had “hunted out” for him (4.2.2, 10). He says that their relationship, while faithful, taught him the difference between “the restraint of the marriage covenant that was agreed to for the sake of generation” and “the agreement of a lustful love” (4.2.2, 8-15). But Book 4 is dominated by the death his childhood companion and friend, whose friendship he says “was sweet to me beyond every sweetness of my life at that time” (4.4.7, 15-17). He also tells how he was “repaired” and “remade” not by his mistress, but only by the solace and company he found in his other friends, whose company seized his soul and with whom he discussed his love of the beautiful (4.7.12, 6-9; 4.8.13, 9-10 and 14-24; 4.13.20. 1-6).

At the end of Book 6 the same contrast occurs between Augustine’s sexual passions and his intense desires for friendship and wisdom. He describes how he felt at age thirty when recalling his nineteenth year, when had he first read Cicero and “had begun to be hot with zeal for wisdom,” resolving “to leave behind all empty hopes and mad lies of vain desires” (6.11.18, 1-4). He recounts a dialogue with himself, in which he was torn between his desire to give himself wholly “to seeking God and the happy life” and his opinion that he would be “exceedingly miserable, were I deprived of a woman’s embraces,” since he did not have the strength for continence (6.11.19, 35-36; 1.11.20, 51). Augustine’s inclination to seek a wife conflicted with his desire to live with his friends “with secure leisure in the love of wisdom,” and he tells us that his friend Romanianus’ plan for a

communal home fell through because of the problem their wives would pose. “Bound by a disease of the flesh,” he says, “I dragged my chain of deadly sweetness, fearing to be set free” (6.11.21, 2-3; 10-11). He does speak to his friend Alypius of the “delights of my state of life, which lacked only the honorable name of matrimony” (6.12.22, 24). But he admits that he was driven on most of all by “the habit of satisfying insatiable concupiscence,” which “tormented me like a captive” (6.12.22, 36-37). The book ends with the juxtaposition between Augustine’s terrible grief over his separation from his concubine of fifteen years and his nearly immediate taking of another mistress (6.15.25).

This brief survey of Augustine’s own experience shows that Augustine was sensitive to the power of concupiscence in the first place as a non-rational, involuntary movement in the soul that, when obeyed, can turn into “habit,” and then “necessity” (*Confessions* 8.5.10, 9-12; cf. *City of God* 14.16). But this is not the deepest ground of Augustine’s skepticism. Augustine did not simply condemn concupiscence, since he did not see it as simply bad to be driven on by an involuntary desire, provided it was for good things (Kelly 1983, 92-93; Lamberigts 2000, 178): he describes his youthful desire for wisdom in terms of concupiscence, and his description of the company of his friends seems to be an example of such concupiscence at work (3.4.7, 9; 4.8.13). Rather, Augustine seems to have been sensitive to the ways that concupiscence tended to crowd out other, more profound experiences of the soul, whether of friendship or of the solitary mind.<sup>16</sup> This helps to explain the paradox that, while Augustine more than any other Church father developed a teaching on marriage in terms of friendship between the spouses, he did not

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<sup>16</sup> This sensitivity was particularly acute earlier in Augustine’s career, as the *Soliloquies* shows (1.17).

consider sexual relations to be the essence of marriage and judged marriages according to their continence. It also explains his insistence that sexual relations be indulged only when honor can follow pleasure and thereby counteract the habits of concupiscence.

The complications that we have encountered in trying to understand Augustine's simple deduction of eternal law show us the limits of the argument in *Contra Faustum*. In particular, it shows that the precepts of the eternal law tend to obscure the deeper investigation that would actually justify them. The argument is clear enough in refuting Faustus' charge that the patriarchs were immoral in being so concerned with procreation. However, the fact that Augustine ultimately had to appeal to the health of the soul and to a conception of human society introduced a great difficulty that led us further and further from a discussion of the eternal law itself. The difficulty was caused by the fact that, while the connection between the health of the human race and procreation is quite obvious, the conditions of the health of the soul and the elements of truly human society are far more difficult to discern. In order to understand Augustine's conception of sexual relations in light of the eternal law, in particular his restriction of sexual relations to the intention to procreate within marriage, we would have to complete the account of human psychology that lies behind his particular deduction of the eternal law and his defense of Christian teaching. This would require studying above all his works on marriage and his account of his own experience in the *Confessions*. Only by completing this investigation could we uncover the ground of Augustine's strict view of concupiscence and his elevation of

continence and determine the degree to which his conception of eternal law and human nature depends on divine revelation.

#### 5. On war and the natural order (Moses)

After a brief consideration of David, Augustine takes up Moses. The discussion of Moses' actions is longer than that of any other patriarch, since Faustus had blamed him for five different things: murdering the Egyptian overseer, plundering the Egyptians during the flight from Egypt, conducting wars, doing many cruel things, and not being content with only one wife (22.5; 22.69). Augustine takes up the first four charges in order (he has addressed the fifth in his earlier defense of polygamy). The most important question here is how killing and war can be understood in light of the natural order. While Faustus blames Moses for the fact that he killed anyone at all, Augustine's general answer is that killing is just when commanded by and "ordained" or "legitimate" authority (22.70). He insists that the natural order itself sanctions the division between those who command and those who obey and allows those in authority to kill in order to preserve the peace of their community. It does so because this arrangement is most conducive to the "public safety" (22.74). This general answer, of course, is not without its difficulties. As we will see, this arrangement is a compromise between two principles of justice—that justice requires obedience to lawful authority and that justice requires treating each person as he deserves.

Augustine's condemnation of Moses' murder of the Egyptian overseer depends on the distinction between authorized and unauthorized killing, and therefore indicates that the eternal law sanctions obedience to political law. However, in his defense of the

plundering of the Egyptians Augustine is not content to appeal to God's authority as ruler of the Israelites: he also appeals to a notion of what was fitting or deserved. Augustine's defense of Moses' wars puts these two principles together in the general formula that the public safety requires a division of labor between those who command and those who obey, with the former commanding what will correct the vices that threaten the public safety, and the latter carrying out those commands. Augustine accepts that this may mean obeying commands that are ill-conceived and even wicked, but he only permits disobedience to political authority where the command is known to be contrary to the law of God. In nearly every case, then, following the eternal law means submission to political—that is, merely human—authority.

As this summary suggests, the discussion here is not an exhaustive analysis of political authority. Augustine explicitly forgoes a discussion of just war (22.74), remaining content merely to sketch a general justification for war and the basic division between the rulers and the ruled in any political community. The immediate purpose is to counter the pacifistic understanding of justice that Faustus thinks is demanded by the New Testament. In refuting this understanding Augustine provides a beginning point for Christian reflection on war. He does so using a combination of Biblical arguments and a deduction from the eternal law and the natural order, understood as desiring the “health” or “safety” of human beings. As was the case in the example of marriage and self-defense, the argument also shows the limits of a doctrine of eternal law and indicates the investigations we would have to undertake in order to have a complete understanding of justice.

a. Moses' murder—the significance of “ordained power”

Augustine's general interpretation of Moses' murder of the Egyptian overseer (Exodus 2:11-13) is that it was a sin that nevertheless revealed something promising in Moses' as yet untamed character. Augustine says that in consulting the eternal law he finds “that a human being should not have been killed by him who bore no ordained power, although he was unjust and wicked” (22.70). Nevertheless, souls that are fertile and capable of virtue often manifest some vices that are potentially suited to virtues, provided they are cultivated. And so “that movement of soul, by which Moses, departing from the order of power, did not endure his pilgrim brother, suffering injury from a wicked citizen, to be unavenged, was not barren [*inutilis*] of the fruits of virtues; but uncultivated to that point and indeed vicious, it yet poured forth signs of great fertility” (22.70). Augustine compares him with the Apostles Paul and Peter in this respect.

Augustine's discussion of Moses' sin includes three references to lawful or ordained authority: he speaks of “ordained power,” “the order of power,” and “legitimate power” (22.70). This is decisive in evaluating Moses' action and becomes a great theme of the whole discussion of Moses. The eternal law, in demanding that we preserve the natural order, in both body and soul, does not forbid all killing, but demands that we preserve the order of human powers and authorities in our community (Wynn 2013, 197). Moses acted outside that order, and therefore sinned, even if the man he killed was wicked and deserved what he received. The rest of the discussion of Moses deepens our understanding of the basic principle that the eternal law demands obedience to political law. This principle, which at first seems to be merely a statement of legal positivism or



conventionalism, is justified, reformulated, and eventually qualified in the discussion that follows.

b. Moses' plundering of the Egyptians—giving to each what he deserves

The next topic is the plundering of the Egyptians, as carried out by Moses at God's command (Exodus 3:17-22, 12:34-36). Departing from his usual practice, Augustine does not refer to the eternal law at the beginning of the discussion. When he does finally come to it, he says:

The eternal law, which commands that the natural order be preserved, forbids that it be disturbed, has put certain deeds in a certain middle position, so that boldness in usurping them is deservedly blamed, but obedience in pursuing them is rightly praised. It makes a great difference in the natural order what is done by whom, and under whom each person acts (22.73).

Augustine explains this statement by referring to Abraham, who would have been “horrible and insane” if he had sacrificed his son on his own, yet was “faithful and devoted” in doing so at God's command (22.73). And so what was “execrable” became “not only blameless, but praiseworthy” (*ibid*). Augustine does not say that Moses' plundering was so extreme a case; he says only that if one praises Abraham one must also praise Moses. He ends the discussion by chastising—and even taunting—Faustus for questioning God's authority to command such things, and by saying he hopes that Faustus will turn out like Peter, who later preached the very events of Christ's life to which he had once objected (22.73; Matthew 16:23).

This passage, especially the reference to Abraham, seems to cast the plundering of the Egyptians as something bad, unjust, and even despicable in itself, which becomes good

only because God commanded it to be done. However, this is in some tension with the argument as a whole, since Augustine indicates at various points that the plundering of the Egyptians was not in itself unjust. He even argues that it was “fitting” or “deserved” (22.71, 22.72). In fact, the argument alternates between giving purely theological reasons justifying Moses’ obedience to God—God’s justice, knowledge, and goodness, and man’s duty to obey Him—and reasons that we could call simply political or moral, which rely on our sense of justice independent of any knowledge of God (cf. Mattox 2006, 93-95, who treats only the theological argument). These latter arguments thereby bring to light another principle, apart from the principle of authority—that justice means doing what is fitting or deserved.

Augustine begins with his basic view that Moses did not sin in doing what God commanded, and in fact would have sinned if he had failed to do so (22.71). He at first defends Moses’ obedience by appealing to God’s knowledge not only of human deeds, but of human hearts, and therefore of what each person ought to suffer. God’s superior nature thereby guarantees the justice of His command. However, Augustine then makes an observation in his own name about the hearts of the Israelites and Egyptians: he says that the Israelites were “carnal and occupied with the desire of earthly things,”<sup>17</sup> while the Egyptians were sacrilegious and wicked, since they used their gold to serve idols and “unjustly and vehemently” afflicted their guest-workers “with unpaid labor” [*labore*

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<sup>17</sup> Presumably Augustine draws this from God’s speech to Moses at Exodus 3:17-22, where he first tells Moses what he is going to do and promises that he will lead Israel to a land “flowing with milk and honey, and that they will not leave Egypt empty-handed. The implication is that God had to promise the Israelites the spoils of their oppressors in order to encourage them in their liberation, even if that liberation had another, ultimate goal. See note 18, below.

*gratuito*]. From this he draws the conclusion that both the Israelites and Egyptians were “worthy” [*digni*—the Israelites to be commanded such things, and Egyptians to suffer them (22.71).

Augustine continues in this vein, matching God’s commands with the character and past deeds of the Egyptians and Israelites. He speculates that “perhaps” the Israelites were permitted, more than commanded, to do these things, “according to their own wills and thoughts” (22.71). He therefore suggests that the Israelites were already set on plundering, and that God intervened to restrain them to plundering on His command.<sup>18</sup> Augustine then returns to his prior line of argument, stressing the fact of Moses’ obedience, rather than the intelligibility of God’s command. “But it is possible,” he says, “that there are other most hidden causes why this was spoken divinely to that people: but one must yield to divine commands with compliance, not resist with disputation” (22.71). He cites Paul, himself citing Job in his Letter to the Romans—“who knows the judgment of God? Or who has been His counselor” (Romans 11:34; cf. Job 15:8, Isaiah 40:13, Jeremiah 23:18, I Corinthians 2:16). Augustine seems to subsume entirely the political strand of argument into the theological strand in this conclusion:

Therefore whether this be the cause, which I have said, or whether any other cause hides in the secret and withdrawn arrangement [*dispositio*] of God, why He said this to that people through Moses, that they might seek things to bestow on themselves from the Egyptians in order to bear them away, I nevertheless confirm that Moses neither in vain nor wickedly said or allowed this any differently that God had commanded him to do, so that the counsel

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<sup>18</sup> This line of thought suggests that the Israelites’ character restricted the way that God had to deal with them. Perhaps, because they were servile (they had been enslaved for 430 years at that point), God had to promise them temporal rewards for obeying him, and he had to allow them to plunder their oppressors on the way out of Egypt in order to satisfy them. The suggestion is that God restrained the Israelites’ plundering to a time when they would not undermine their own liberation and flight.

of commanding rested with the Lord, but the obedience of acting rested with the servant (22.71).

And yet Augustine does not stop at this point, but rather puts an objection into Faustus' mouth, that "the true and good God must in no way be believed to have commanded these things" (22.72). This objection is consistent with Faustus' original accusations, which do not accept the premise that the Old Testament is a credible testimony of divine history, and forces Augustine to explain further how it can be believed that God would command plundering. To prove this Augustine cannot merely rely on divine authority.

He begins, as he had earlier, with a theological argument, saying that only God could command such a thing as this, "who alone both knows what must be commanded to each and alone allows no one to suffer anything that is not fitting [*incongruum*]." His argument is then that God's knowledge and justice mean that we can trust that His commands are right and should be followed. He then moves to harmonize God's command with the New Testament, mentioning two examples from Jesus' life that "the inexperienced and false goodness of the human heart" or "not human goodness, but plainly vanity" might object to (22.72)—Jesus' promise to tell the angels to gather the tares and burn them (Matt. 13:29-30) and his permitting the devils to enter swine (Matt. 8:30-32). The first assumes that God has an ultimate claim upon all things in the world, while the second shows Jesus clearly destroying someone's pigs and thereby inflicting a loss of property. He obviously could have driven the demons out without destroying the swine. But if God indulged the devils at the expense of someone's property, Augustine asks,

why is it absurd, if the Egyptians, human beings wickedly dominating over free human beings, of whose reward for their so hard and unjust labors they were debtors, deserved [*meruerunt*] to be deprived by the Hebrews of the earthly goods that they were using in sacrilegious rites against the right of the creator (22.72).

In other words, if we grant that God does not have to abide by human rules of private property,<sup>19</sup> why should we think it absurd that He would transfer property from the manifestly wicked Egyptians to the Hebrews? Here we see the same two charges that were made before—that the Egyptians owed something to the Israelites and that they had used their property badly. It is clear that the argument has once again moved from a theological argument enjoining trust in God’s ultimate goodness and justice to a political or moral argument, showing that what God commanded is not in fact unjust, and even deserved. The implication is that we can trust that the narrative is a credible testimony of God’s action, since His command is not so obscure after all.

If this is really so, and the plundering God commanded was in fact deserved, we may well wonder whether Moses needed God’s permission to plunder the Egyptians. However, Augustine immediately insists that Moses and the Israelites would have sinned if they had done this “on their own initiative” or “spontaneously” [*sua sponte*] (22.72). In fact, he suggests, consistent with his earlier characterization of the Israelites’ “carnality” (22.71), that perhaps they sinned by wanting these things. In the end, the justice of the action comes from its being permitted “in the divine arrangement,” at the “just and good judgment” of God (22.72). This leads to the concluding discussion of the “middle” deeds

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<sup>19</sup> To Augustine’s examples could be added Jesus’ cleansing of the Temple, as Mattox notes (2006, 135).

under the eternal law, mentioned above, where the decisive consideration is whether an action has been commanded by an authority (22.73).

How then do we put together Augustine's arguments? In particular, how do we put together Augustine's denial that Moses could have initiated the plunder of the Egyptians with his arguments that the plundering itself was fitting or deserved? The most obvious solution relies on the principle of "ordained power" in the previous example: even if Moses and the Israelites are to be freed from Pharaoh's authority, they have come under God's authority, and so cannot act outside the "order of power," even to do things that might otherwise be just. The plundering of the Egyptians may thus be compared to the murder of the Egyptian overseer—both are deserved, but only the plundering is consistent with the "order of power" of Moses' community.

Augustine's position is therefore that the decision to plunder the Egyptians belonged to God and that Moses owed obedience to His decision. However, his discussion of the matter has given us reason to think that God's command was just and prudent. He has made the case that the Egyptians' injustice merited punishment and has suggested that the political circumstances and character of the Israelites made the plundering necessary. The plundering therefore seems more like the counsel of a wise ruler than an act of injustice. This explanation of God's command prepares us for the next section, where Augustine presents a general justification for war that brings together the principles of obedience to authority and commanding what is fitting or deserved.

c. Moses' wars—the counsel of the prince and the duty of the soldier

Augustine now turns to the wars of Moses in Exodus and Deuteronomy. In defending them he gives a justification for war that combines the two principles of justice that have come to light so far. He says that Moses' wars will not "horrify" or "dazzle" anyone who sees the difference between acting out of desire or fear and obeying "the command of God, who knows what, when, [and] to whom He must permit or command, [and] what is fitting for each to do or suffer" (22.74). Moses was therefore not savage in obeying, nor was God savage in commanding, "but He assigned what was appropriate to the deserving and frightened those who deserved it [*sed digna dignis retribuebat dignosque terrebat*]" (22.74). This is essentially the same starting point as Augustine's defense of the plunder of the Egyptians, and portends the same tension between theological and political justifications for obedience to God's commands.

In this case, however, Augustine does not turn to any particular events or facts to justify the wars of Moses. Instead, he makes a general argument about war, beginning with a long statement about the true evil in war:

What is blamed in war? That people die, so that those who win, although they too will die, may live in peace? To blame this belongs to the fearful, not the religious. The desire for harm, the cruelty of vengeance, a fierce and implacable soul, the wildness of rebellion, the lust for domination, and other similar things—these are the things that are rightly blamed in wars; in order that these things may also be rightly punished against the violence of those resisting, many times wars themselves are taken up to be waged by the good, whether with God or some lawful power [*imperio*] commanding, when [these true evils] are discovered in this order of human things, where order itself constrains [the good] either to command such things or to obey them (22.74).<sup>20</sup>

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<sup>20</sup> This passage is crucial for scholars of Augustine's just war doctrine (Mattox 2006, 46-47, 58; Wynn 152, 199, 215, 219). We will consider them in the review of this section below.

We can see that Augustine begins by pushing back against simpleminded pacifism. He insists that what is really to be lamented and blamed in war is not bloodshed *per se*, but the vices that it encourages. These true horrors of war, however, also justify war: they are so destructive that they justify good people in waging war to punish them. However, Augustine insists that these wars may only be prosecuted in a manner consistent with “order itself,” or what we might call the “chain of command.” Augustine thus brings together the main points of the first two examples: the citizen or subject’s duty is to obey political authority, while the duty of those authorities is to command what is fitting or deserved by resisting and punishing wrongdoing.

Augustine now turns to Bible, citing the words of John the Baptist and Jesus to make a general argument that war and military service are not incompatible with Christianity. He first remarks on John the Baptist’s conversation with some soldiers who had asked him what they ought to do (Luke 3:14), and says that, if war were simply wrong,

he would have answered them: cast aside your arms, desert the army, strike, wound, knock no one. But since he knew that they, when they did these things as members of the army, were not murderers, but ministers of the law, and not avengers of their own injuries [rights], but defenders of the public safety [*salutis publicae*], he answered them: do not ransack anyone, do not make false accusations, let your wages suffice for you (22.74).

Augustine begins with the fact that John does not condemn the soldiers as soldiers, and then explains this fact by attributing to John the thought that soldiers who use force in their office are justified by their being “ministers of the law” and “defenders of the public safety.”<sup>21</sup> He next remarks on Jesus’ famous command to “render unto Caesar what is

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<sup>21</sup> Augustine cites this passage at least five times in order to defend Christian soldiers (see Wynn 2013, 200 for references). In Augustine’s interpretation, John the Baptist does not condemn the soldiers as soldiers, but



Caesar's and unto God what is God's" (22.74; Matthew 22:21). He insists that one of the purposes of this tribute was to provide wages to soldiers to fight wars when necessary, which implies that Jesus presumed in his command that war was not simply wicked. Finally, Augustine refers to Jesus' conversation with a Roman centurion (Matthew 8:9) and observes that "he praises his faith; he does not command his desertion" (22.74). The unspoken conclusion is that behind Jesus' words is the assumption that war and military service are not simply sinful. Augustine intends these examples to show that John and Jesus accept the distinction between soldiers and murderers, and therefore the general view of political authority, obedience, and war that he has just articulated.

Augustine explicitly refrains from pursuing a "long disputation" regarding just and unjust wars, insisting it is "not necessary" (22.74; cf. *On Free Choice* 1.15.111, 64-65). What is needed at the moment is only to understand that "the causes and authorities with which human beings undertake and conduct wars make a difference" (22.75). He sums up by restating his general teaching in terms of the natural order that is commanded by the eternal law. If we consult "the natural order accommodated to the peace of mortals," we find that it seeks "that the authority and counsel [*auctoritas et consilium*] of undertaking war reside in the prince, but that soldiers owe service [*ministerium*] to wartime commands for peace and the common safety [*paci et saluti communi*]" (22.75). Augustine's invocation of the "natural order" indicates that this division between prince and soldier is sanctioned by the eternal law. The deduction is quite simple. The command of the eternal

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tells them to avoid the vices common to soldiers—using their force of arms to terrify people and take things from them, using their authority as witnesses (like police officers today) to get people convicted of crimes they did not commit, and complaining about their wages.

law was that the natural order be preserved, which led to the first conclusion that all “mortal delights” be coerced to a “natural limit,” which was identified with “mortal safety” [*salus*], whether of an individual or of the human race (22.27-29). Augustine connects this end of “mortal safety” to the “peace and common safety” or “public safety” of a political community, which is threatened by wrongdoing and violence and secured by a basic division between the princely power that provides the “counsel” of the community and the “ministers of the law” who execute it. The eternal law therefore permits war and justifies military service.

Augustine then turns to a general argument justifying the wars of Moses. He gives three arguments for his assertion that it is not “pious” [*fas*] to doubt their justice (22.75). He first says that the wars were fought “either to frighten, to crush, or to subjugate human pride,” thereby implying that their purpose was just (22.75). Second, he says that no wars—not even wars of human cupidity—can truly hinder the saints, since they can profit from suffering. The implication is that surely wars waged at divine command would not hinder them, either, and thereby undermine the work that God must be most concerned to bring about. Augustine’s third argument is that the general obedience owed to human rulers applies even more to God:

When the just man, if perhaps he should serve under even a sacrilegious human king, should be able to make war correctly at his command, since he preserves the order of civil peace; to whom what is commanded is either certainly not contrary to God’s precept, or it is not certain whether it is, so that perhaps the iniquity of commanding makes the king guilty, but the order of obedience manifests the soldier’s innocence—how much the more innocently does he remain in the administration of wars who fights at God’s command, Whom everyone who obeys Him knows is unable to command anything evil (22.75)?

This argument completes the general statement on war by stating the limits to Augustine's general principle of obedience to political authority: the commands of princes can be genuine sins, even where obedience is owed to them, but this obedience reaches its limit only when a prince commands something known to be contrary to a command of God (Mattox 2006, 57-58). The argument of the analogy as it applies the Moses' wars is that, if God's command is accepted as the only reason to disobey a civil authority,<sup>22</sup> then fighting wars at God's command must be just.

Augustine's first two arguments seem meant to expand our notions of what just war means in God's case, since His purposes can include both the humbling of human pride and the disciplining of the saints. The third argument, however, is open to the objection that we cannot suppose that a just God would ever command war in the first place. Augustine had put a similar objection into Faustus' mouth in the discussion of the plundering of the Egyptians (22.72). Here he addresses the objection by discussing Jesus' command "not to resist evil" and "to turn the other cheek," which seems to command pacifism (22.76). The summary of his argument is that this saying demands "a preparation of the heart" that is compatible with outward actions of resistance and correction (22.76; *Letter* 138.13; *Commentary on the Sermon on the Mount*, 1.19.59; Wynn 2013, 223). Jesus commands therefore that any "example of correction" be accompanied by "a disposition of love" (22.79).

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<sup>22</sup> This formulation can be compared with Augustine's remark in the *City of God* that the citizens of the heavenly city will obey all commands of the earthly city "if it does not impede the religion by which it is taught that the highest and true God must be worshipped" and defends its institutions "as much as is granted by saving piety and religion" (19.17, 54-55, 58-59).

Augustine first contextualizes Jesus' saying within the whole history of divine revelation. That history is divided into two dispensations, in which God teaches two different lessons. At first, God held out earthly goods to those who served Him, such as kingdoms and victories over enemies, in order to show that these depended on His power and judgment alone (22.76). In the fullness of time, however, the New Testament was revealed, which demonstrated "that there was another life, for which this life ought to be held in contempt, and another kingdom, for which it was proper to bear most patiently the adversity of all earthly kingdoms" (22.76). Therefore, Augustine says, the patriarchs and prophets reigned here in order to show that God gives and takes away kingdoms, while the apostles and martyrs have *not* reigned here, "so that it might be shown that the kingdom of heaven must rather be desired" (22.76). Again, the former fought wars to show that victories depended on God's will, while the latter "have been killed without resistance, so that they might teach that it is a better victory to be killed for the truth" (22.76).

This antithesis and progress between the two Testaments would seem to justify Moses' wars only as part of a history of revelation that culminates in a pacifist teaching. However, Augustine insists that the difference between the Testaments is a matter of emphasis, rather than principle. He points out that the prophets themselves knew to die for the truth, and that victorious Christian emperors have helped spread God's worship among the peoples.<sup>23</sup> He also insists that certain sayings of Jesus can only be understood on the assumption that there will be Christians who take up the sword (22.76). He observes that at one time Jesus reminds his disciples that they had gone out "without purse, or wallet, or

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<sup>23</sup> Wynn notes that the reference is almost certainly to the emperor Theodosius' victory over the pagan usurper Eugenius at the battle of Frigidus in 394 (2013, 256-263; cf. *City of God* 5.26).

shoes, and you lacked nothing,” while at another time he says that “he who has a purse, let him take also a wallet, and he who has a tunic, let him sell it and let him buy a sword” (22.77; Luke 22:35ff.). Against those who ascribe to the sword only a spiritual meaning, Augustine cites the later passage where one of the disciples says “here are two swords,” to which Jesus replies “it is enough” (22.77). These passages, combined with those that Augustine had used earlier to defend military service (22.74), counter the view that the movement from the Old to New Testament is simply a movement from war over earthly things to pacifism in hope of heavenly ones. In Augustine’s view, a concern for the fate of earthly kingdoms remains in the New Testament, even if the work of the apostles was to preach the primacy of heaven. If this is the case, then the saying “not to resist evil” and “to turn the other cheek” must be compatible with actions that cause physical harm for the sake of correcting evils.

Faustus therefore fails to see how Moses’ wars could have played a part at an early stage of divine revelation and how war in general is not prohibited even in the Christian dispensation. Augustine attributes this misunderstanding to Faustus’ “inexperience,” which causes him to make “rash condemnations” (22.78, 79). Oddly, this inexperience is both a failure of knowledge and a failure to see the limits to human knowledge. On the one hand, Augustine says that Faustus is unable to “consider” [*cogitare*] that divine providence maintains all things “in an order of natures and merits” and that “right human will is joined to the divine law, but disordered desire is coerced by the order of divine law” (22.78). Therefore the only evil in the world is human wickedness, which disturbs the natural order by failing to love God above all and to use other things according to their

“divinely instituted” purposes (ibid.). This wickedness is ultimately voluntary, or “in our power,” since we know from the Bible that even the “ignorance” and “weakness” that compromise our will arise “from the secret order of punishments and those inscrutable judgments of God” (ibid). Nothing can free from this penalty except the grace of God in Jesus Christ. On the other hand, Augustine says that Faustus fails to recognize that the causes of any particular arrangement of divine providence are “hidden, yet just” (ibid). So while we can know *that* everything is a product of God’s justice and mercy, so that “those sins, which would not be sins unless they were against nature, are so judged and ordered that they are not permitted to stir up or debase the nature of the whole,” the precise “measures, numbers, and scales” by which God arranges the world are “in secret” (ibid.).

Augustine seems to contradict himself in his blame of Faustus’ inexperience. He blames him for failing to see that God in every instance maintains a perfect order of justice in the world, in which human beings offend against the natural order and are corrected by God, and for failing to recognize that God’s justice remains beyond human comprehension. He therefore seems to blame Faustus for failing to assent to the proposition regarding God’s universal and singular providence while admitting that we cannot have definitive evidence regarding that providence. We can perhaps understand this contradiction by thinking about what Faustus thinks we can know about God. For instance, he thinks that God’s justice precludes war, or any concern for such contemptible goods as Egyptian gold or the preservation of an earthly kingdom, while Augustine argues that in fact we know that God commands us to love Him above all and to discern His will in the natural order of things, which Augustine has argued may include war. Augustine therefore argues that we owe

obedience to God's commands even if His justice remains mysterious to us, but his more expansive view of justice allows him to render those commands as intelligible as possible in terms of human justice. Faustus seems to have too simple a view of what God's care for human beings ought to look like—ignoring, for example, the different circumstances in which God acts and the divine pedagogy in the two Testaments—and so is incapable both of understanding God's purposes where they can be understood and of maintaining faith where they are mysterious (22.79).

In the end, then, Augustine does not justify the individual wars of Moses so much as provide us with a series of arguments that make us less likely to doubt their justice. His first argument is that war is in principle permitted by the eternal law, since it is compatible with the natural end of mortal "health" or "safety." His second argument is that the teaching of the New Testament itself does not preclude military service, since soldiers are not condemned there and certain passages presume that Christians will take up the sword. His third argument is that God's providence and justice cannot be simply understood. He argues that the wars of Moses must be seen within the context of what turned out to be a preliminary and incomplete revelation, in which God sought to instill a lesson a peculiar lesson about His power over earthly affairs, and warns us not to presume that we know the proper political conditions for the cultivation of holiness.

d. Augustine now turns to the fourth charge against Moses—that he was cruel—and defends his killing of 3,000 Israelites after their idolatry of the golden calf (Exodus 32). He does not appeal to the eternal law to do so. Instead, he considers the executions in the

context of Moses' mission to instill holiness and submission to God in the Israelites. He indicates both their individual justice and their benefits to the Israelites as a whole. He says that the few men whom Moses killed were wanted by God in His "deep and secret judgment," while the whole episode "instilled a salutary fear in the present and sanctioned discipline in posterity" (22.79). He adds that we must see Moses' bloodshed in the context of his prayer to God to "blot me out of your book" if He will not forgive the Israelites' sin (22.79; Exodus 32). This shows that Moses was motivated by love, rather than cruelty. He concludes by turning Faustus' charge of cruelty on its head, insisting that killing by the sword is far more humane than the contemporary practice of sentencing great criminals to be trampled and mangled by beasts (22.79).

In the course of argument Augustine takes up once against Jesus' precept to turn the other cheek. He compares Moses to Paul in order to show that punishment for sin is not superseded by the New Testament, citing the two places where Paul delivers particularly terrible sinners up to Satan (I Corinthians 5:5; I Timothy 1:20) as well as an apocryphal story about Thomas the apostle (22.79). These examples show that the precept "to turn the other cheek" is compatible with seeking correction of injustice, provided that one maintains "an interior disposition of love" (22.79). The conclusion to be drawn from this short discussion is that the correction of wrongdoing can indeed proceed from a good intention and that the proper ends of punishment include both retribution of present wrongdoing and deterrence of wrongdoing in the future (*City of God*, 19.16).

*Review: Augustine on Just War*



This discussion of Moses' career is crucial to scholars of Augustine's so-called doctrine of just war (Wynn 2013, 152; Mattox 2006, 44; Markus 1983; Lenihan 1988, 44-46). The generality of Augustine's argument, both here and in the few other places where he makes similar observations (see Mattox 2006, 44-45 for a list of citations) presents a great problem in interpretation. The two most recent and comprehensive studies of Augustine's thought on war come to opposite conclusions on the question of whether Augustine really offered a doctrine of just war. Mattox maintains the traditional position that Augustine is indeed "the father of the just war tradition in the West" and claims to uncover the "system" or "theory" beneath the scattered discussions in Augustine's works (2006, 2, 5). However, to do so he must impose upon Augustine's thought the categories of modern just war theory (2006, 8-11). Wynn seizes upon this weakness and contends that the notion of Augustine as the founder of a just-war tradition is largely a "construction" of later writers, whose interpretations confuse Augustine's pastoral concern to justify Christian military service with positive attitude toward war itself (2013, 1-4; 147-148; 321-322; 330).

The strongest argument in Wynn's favor is Augustine's explicit disavowal of the "long" discussion that would be needed to exhaust the question of just and unjust wars (22.74; Wynn 2013, 31). Wynn correctly observes that Augustine never wrote such a work, which makes it difficult to ascribe to him anything like a just-war doctrine in the modern sense. However, Wynn interprets Augustine's disavowal of this long discussion to mean that Augustine was interested only in questions of authority and obedience, and not in the justice or injustice of war itself (2013, 242). This interpretation dovetails with Wynn's

contention that Augustine subverts the Roman conception of war and victory in favor of a conception of war as a necessary evil (2013, 233, 321-336).

There is a great deal of merit in Wynn's critique of the traditional interpretation, but it seems to underestimate the high regard Augustine had for those who undertook a military career (*Letters* 189.4-5, 220.3, 229.2; Wynn 2013, 294-295). It also seems suspect to conclude from the generality of his discussions that Augustine himself was not really interested in the distinction between just and unjust wars. This would be the same as assuming that, because Augustine sets aside the "long" discussion of "how exactly the temporal law assigns what is his own to each" in *On Free Choice*, he was uninterested in the question of distributive justice (1.15.111, 63-65). Of course, Augustine did not compose a work on this topic, and so perhaps he really was not concerned with this question any more than he was interested in the details of just war. However, our analysis of *On Free Choice* showed that Augustine was aware of the decisive importance of this question for a truly adequate moral or political doctrine. And as Burns observes, Augustine's statement that it would take a long time to "explain" distributive justice implies that Augustine himself already possesses that knowledge (1.15.111, 65; Burns 2012, 271-272). It is thus safer to interpret Augustine's setting aside of these two questions as revelatory not of his own interests and understanding, but of the limits of the arguments in *On Free Choice* and *Against Faustus*. In the case of *On Free Choice*, a detailed discussion of distributive justice is set aside in order to preserve an argument for the compatibility of eternal law and temporal law as such. The hinge of that argument is the identification of the temporal law with the maintenance of "peace and human society," an end lower than,

but compatible with, adherence to eternal law (1.15.108, 47-8). Our analysis showed that this argument was only an imitation of the true understanding, which would require greater precision regarding the virtue that political communities must cultivate and the prudential judgment that allows one to provide for virtue in concrete political circumstances. Similarly, in the case of *Contra Faustum* the question of what exactly makes for just war is set aside in favor of an argument for the compatibility of eternal law and temporal law as such—Augustine argues that war is permitted in the natural order of things and that the soldier is justified in waging war at the command of a legitimate authority except in very rare cases. Here too, the hinge of the argument is the identification of war and military service with the preservation of “public safety,” “peace and the common safety,” or “the order of civic peace,” an end sanctioned by the eternal law and natural order (22.74, 75; Wynn 2013, 287, 294). Augustine’s general account indicates what a more precise knowledge of just and unjust war would entail. It would require precise knowledge of the components of the civic peace that war is fought to defend, which we know must involve an “ordered society” of both soul and body (22.61). It would also require an understanding of the vices that justify war as well as the vices that it causes (22.74), along with the knowledge of how to conduct war without undermining this aim. Finally, it would require an understanding of the circumstances and characters of the peoples in a given political situation (22.71).

The aim of the argument regarding war in *Contra Faustum* seems meant only to refute a simpleminded position, a principled opposition to war in the name of justice or piety. In refuting this position, Augustine appeals to the eternal law and the broad end of

human health or safety to show how war can be seen in light of the order of nature. In doing so he gives Christians in particular a vantage point from which to approach the question of war and military service, justifying their service as a contribution to the health of their communities.

## 5. Conclusion—the eternal law as discerned in nature

Augustine's application of the eternal law in *Contra Faustum* is intended first of all to oppose the Manichean denigration of the Old Testament, which proceeded on what we could call ascetic or pacifistic grounds. Faustus had objected to the "carnality" of the patriarchs (22.71)—to their concern for offspring, self-preservation, and victory over their enemies (22.5). The eternal law, understood as God's will and reason as expressed in the natural order, allows Augustine to formulate what we could call the "common sense" retort to the Manichaeian critique. He draws from it the notion that actions that serve "mortal health" or safety must be natural, and therefore generally good, and that actions that preserve this health must be permitted in the economy of human life. Augustine then draws on the ends of procreation, self-preservation, and civic peace to refute the criticisms of Faustus. He defends the patriarchs' concern for offspring and their polygamy by their contribution to procreation, he defends Abraham's duplicity regarding Sarah as a legitimate attempt to preserve himself, and he defends Moses' military career on the grounds that war is an instrument of the civic peace.

However, Augustine's application of the eternal law and appeal to the ends subordinate to "mortal safety" is perfectly clear only when refuting the most strident and

fanatical criticisms of Faustus. At each step in the argument Augustine shows the complications of any genuine view of “natural ethics,” since the order of nature must include the health of the soul as well as the body (22.61). This means that the end of self-preservation, while natural, cannot be pursued without qualification: Augustine indicates that we have other obligations that we must take into account as well, such as the purity and safety of our spouse. Nor is the natural end of procreation an unqualified good: the one specific rule in *Contra Faustum* that Augustine says admits of no exceptions is the prohibition against incest, which he forbids even for those who think they may be the last people alive in the world (22.43). In the end Augustine subordinates procreation to the notion of an “ordered marriage” or “ordered society” (22.61), and we saw that his precepts of sexual morality could only be understood on the basis of a psychological account of the effects of concupiscence. Finally, while Augustine offers only the smallest explicit qualification to the common citizen’s pursuit of “civic peace” (one cannot obey the orders of a political authority that directly contradict a known command of God), he showed that the proper pursuit of this end would require knowledge of the decisive element of “the order of civic peace,” which is “most of all and most deeply” the “natural order of souls” (22.61), as well as the practical knowledge of how the vices that threaten this order can be best combated in concrete circumstances (22.74). This means that the doctrine of eternal law is ultimately subordinate not only to psychology, but to political science.



## **Conclusion**

### *Summary of the Argument*

We turned first to Augustine's *Confessions* and the context for Augustine's investigation of the eternal law. In Book 3 Augustine speaks of his youthful ignorance of "true, inner justice" and his subsequent blame of the patriarchs in the Old Testament (3.7.13, 17; 3.7.12, 4-6). He includes a summary of the understanding that he came to possess. There are three parts of that summary that stand in some tension with each other. The first part is an argument that true justice, while one in itself, is compatible with great diversity in laws and mores and ought to be understood in terms of fittingness or propriety (3.7.13-14). The second part is a deduction of the moral law from what is always and everywhere just. This line of argument culminates in the statement that justice means choosing God over all other goods (3.8.16, 53-54). The third part indicates the importance of political justice, as Augustine warns us not to confuse acts of distributive or retributive justice with sins (3.9.17, 4-5). The end of the summary of "true, inner justice" left us with the question of how these parts of Augustine's understanding relate to one another: how does the notion of justice as the fitting or proper harmonize with justice as obedience to and love of God, and how do specifically political questions bear on true justice?

Chapters 2-5 dealt with the more sophisticated presentation of the eternal law in *On Free Choice* I, which Augustine indicates contains the reasoning behind his summary of true justice. The main body of the conversation falls into two parts. Broadly speaking, the first (1.3.14-1.5.40) is "destructive," and consists of a rigorous testing of the moral opinions

of Augustine's interlocutor Evodius. This testing demonstrates the stubborn dependence of those moral opinions on the law of his political community and provokes a crisis of conscience concerning the conflicting standards of political law and the law of divine providence. This first part is treated in Chapter 2. The second part (1.5.41-1.16.117, 34), on the other hand, is "constructive." There Augustine leads Evodius through a three-part investigation of the relation between human law and true justice, which culminates in a doctrine of eternal and temporal law that relieves Evodius' crisis. That three-part investigation is treated in Chapters 3-5.

In Chapter 2 we treated the first, purely dialectical part of *On Free Choice* I and deepened our understanding of the mutual dependence of morality and law. Through the action of the dialogue's first half, we saw the difficulty of extricating our moral judgments from the influence of political law. This was true even for such obvious acts of wrongdoing as adultery, stealing, and murder, which (the argument shows) we tend to interpret in light of the authoritative pronouncements of political law. Augustine and Evodius tried to establish a rule of wrongdoing based on the insight that good people evince a certain indifference to external goods, but the condemnation of "lust" for or "love" of external goods cast a shadow not only on murderers and other violent offenders, but also on soldiers, police, and those who use force in their own defense (1.5.32-33). This failure to rise to an independent standard of justice accounts for Evodius' political attachments caused his crisis of conscience.

Evodius' struggle to defend his intuition that the political law is truly just in distinguishing between those who use force to secure their own "life, liberty, and purity"



(1.5.32, 6) and those who use force to take those things from others, and in commanding some of its citizens to fight to preserve those things from hostile enemies, constituted for the reader a meditation on the purpose of political law. The juxtaposition of the law permitting self-defense and the law commanding military service indicated that our experience of political law moves in two different directions. On the one hand, political law is justified by its securing the persons and property of its citizens; on the other hand, political law imposes duties on us that cannot be justified in terms of individual preservation alone. To the extent that this is true, our experience of law is not only of something that serves us individually, but of something that we serve. Augustine indicated that the foundation for these duties can only be an idea of virtue, or some moral perfection that is a more choiceworthy and dearer possession than any external good. This means that the cultivation of virtue in its citizens will be a concern of the law, whether implicitly or explicitly, and is its ultimate justification.

The initial part of the dialogue therefore subordinated first the question of wrongdoing to the question of what constitutes a just political law, and then the question of just political law to the question of what constitutes human virtue. The bulk of the second part of the dialogue was dedicated to this question, albeit within the context of formulating a doctrine of eternal and temporal law to relieve Evodius of his doubts. The formulation of that doctrine had three steps: first, a general discussion of the distinction between temporal law and eternal law, the fundamental command of which is “that all things be most ordered” (1.6.51, 66); second, a long discussion of what it means for an

individual to fulfill this precept of order in himself (1.7.52, 1-2); and third, a discussion of the nature of temporal law and its standard (1.15.103, 1-2).

In Chapter 3 we took up the first step of the dialogue's positive teaching, which forces us to think about what is implied by our sense that revolution may at times be justified. On the simplest level, that justification implies the existence of some universal moral standard above political law, which Augustine and Evodius eventually call the eternal law. However, this section of dialogue indicated that the standard above political law is first of all the common good, and it raised the question of how the common good is best served. Augustine's examples continued the analysis of political law, indicating that the deepest element of the common good is the practice of virtue within the community, and showed that any application of a doctrine of higher law would require the intervening judgment of prudence that relates political action to the practice of virtue. In this way Augustine taught us that the radical critique of political law opened up by justifying all law in the light of virtue must be extended to an equally radical critique of all revolutionary proposals. The conclusion of the analysis of revolution was this: the question of just political laws depends not only on an answer to the question of human virtue, but on an understanding of prudence or political science. Augustine provided us with the beginning of an understanding of these two questions in the subsequent steps of the dialogue's second part.

Coming back again to the surface of the argument, we saw that the conclusion of the first step invited us to think about the eternal law as a fundamental demand for "order" (1.6.51, 64-66). In the second step, the subject of Chapter 4, we learned something about

what it means to think of morality and virtue in terms of order. On the one hand, order is very simple: it is the rule of the high over the low, and therefore the rule of mind over appetite, or wisdom. On the other hand, it is not so easy to see precisely what it means to live by the light of the mind. What does the mind look to in ordering the rest of man? Surely it must be the idea of happiness; but it turned out that our access to the specifics of happiness is primarily through our sense that we must first become worthy of it by possessing the cardinal virtues. In the course of the conversation, the notion of “living rightly and honorably,” as expressed in the cardinal virtues of prudence, courage, moderation, and justice, came to bear more and more weight, eventually displacing wisdom as the measure of order. It was concluded that the good will, understood as dedication to these virtues, suffices to make someone praiseworthy and happy (1.13.97, 94-101).

Close inspection of the argument, however, taught us that this account of order and virtue, while conducive to a robust sense of eternal law, has three weak points. First was its assumption that the constitution of our will lies entirely in our power, which abstracts from the difficulties caused by habit. The second was the assumption of a perfect relation between the praiseworthy and happy life, which abstracts from any conflict between doing what is admirable and possessing the external goods that are necessary for happiness in this life. The third and most important weakness was the assumption that rectitude or honor provides a firm and independent moral principle. When we push the dialogue for a firm rule of conduct from the cardinal virtues, we find that they are either defined circularly or defined according to the political law. We therefore learned that the effort to give a specific content to the rational and virtuous life draws us to the moral virtues as particular

expressions of the good character we expect from the wise, but that our experience of those virtues is difficult to extricate from definitions given by political law.

The final step of the dialogue's positive teaching was an analysis of the temporal law and its limits that harmonizes its lower moral demands with the strict demands of the eternal law. This was the subject of Chapter 5. According to the account, while the truly good person will be a consistent "lover of eternal things," most people are dominated by love of temporal ones, and therefore require that temporal law be "imposed" on them (1.15.106, 34). The temporal law is limited by the ubiquity of vice to maintaining a system of property that preserves "peace and human society" as much as possible, devising punishments that preserve the "bonds of the state" [*vincula civitatis*] without yet making people truly good (1.15.108, 45-48; 1.15.111, 71). Augustine's description of the temporal law presented at least two problems. First, while "peace and human society" seem to provide a clear "secondary" standard for human law, neither term is given a clear definition: the formulation seems merely to preserve, on a lower level, the tension between the two broad ends of law—the security of individual lives and property and the cultivation of a virtuous way of life—discovered earlier in the dialogue. Second, Augustine did not drop the demand that the temporal law be just, and therefore drawn from the eternal law. This meant that the harmonization between eternal and temporal law required that the lower ends of the temporal law, "peace and human society," have some claim on the virtuous life as demanded by the eternal law. Unfortunately, this connection was not explicitly made in the argument, and so we were forced to provide it ourselves. Reflection on this connection leads us to the conclusion that the harmonization effected by Augustine and Evodius

required that the moral virtues be interpreted “politically,” or according to the needs of political community and its laws, meaning that the moral virtues were in some way varying modes of lawfulness or indeed patriotism.

Overall, then, we learned from *On Free Choice* to consider the problems that beset our attempts to formulate a doctrine of eternal law and thereby make good on our intuition that something outside the law of any community determines true morality. The conversation showed again and again the ultimate subordination of law to the question of virtue, but the doctrine accepted by Evodius turned out to rely on an understanding of virtue based on two identifications that the discussion never clearly establishes: of wisdom and “living rightly and honorably,” on the one hand, and of “living rightly and honorably” and lawfulness, on the other. The doctrine granted, quite plausibly, a certain independence to the cardinal virtues with respect to ultimate wisdom and to the temporal law with respect to ultimate morality, and in that way provided an outline of moral and political science; however, it was ultimately inadequate, since it failed to give a consistent answer to the question of virtue that the argument showed to be the true ground and justification for political law.

In Chapter 6 we turned to *Contra Faustum*, a polemic against a work of Faustus the Manichean<sup>1</sup> that attacked Christians for their reliance on the Old Testament. In Book 22, by far the longest of the thirty-three books (making up about twenty percent of the whole

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<sup>1</sup> Augustine had met with Faustus in Carthage as a young man (5.3.3; 5.6.10-5.7.13). There Augustine says that Faustus did not live up to the reputation that preceded him: while he was charming and pleasant in his public speech, Augustine found him unimpressive in private conversation (5.3.3, 8-10; 5.6.10, 1-9; 5.6.11, 28-44). He nevertheless continued to study with him for some time, and as a result lost all remaining interest in Manichaeism (5.7.13).

work),<sup>2</sup> Augustine turned to a refutation of Faustus' charges against the moral character of the patriarchs. He appealed to the eternal law to do so, which he defines here as "the reason and will of God commanding that the natural order be preserved, forbidding that it be disturbed" (22.27). The intention of this discussion of the eternal law was to show what we can know about God's commands and wishes by looking at nature with our unaided intellect. The eternal law is therefore used to show Faustus that the patriarchs were righteous without simply appealing to the authority of the Old Testament.

The argument of *Contra Faustum* dovetailed with the argument of *On Free Choice* as a presentation of the eternal law that justifies obedience to the commands of God. The argument worked by presuming that God's will is able to be discerned in the order of nature. Augustine's initial deduction of moral precepts from the principle of nature, which necessitated seeing justice in terms of the maintenance of the natural hierarchy of parts that compose the human being, proved to be circular: while he interprets the natural order as demanding the assimilation of man to the "image of God" in faith, he interprets the demands of faith in terms of maintaining the "rule of nature" (22.28). Augustine eventually settled on the formulation that all "mortal pleasures" be disciplined according to the standard of "mortal health" or safety (22.29). From this standard he deduced the further natural ends of self-preservation, procreation, and civic peace, and defended the actions of the patriarchs insofar as their actions sought these ends.<sup>3</sup>

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<sup>2</sup> Augustine remarks in the *Retractationes* that Book 22 is itself longer than nearly all of his other books (2.7.1).

<sup>3</sup> These three natural ends are nearly identical to the three "natural inclinations" that Thomas Aquinas says are parallel to the order of precepts of the natural law: Aquinas mentions the inclination to self-preservation, to marriage and procreation, and to reason, which is manifest in the search for truth concerning God and in social life (*Summa Theologiae*, I-II, Q. 94, a.2, resp.).

However, as we saw, Augustine's explication and application of eternal law in *Contra Faustum* is limited by the fact that these natural ends were only the beginning point of moral reasoning. The pursuit of each of these ends is limited by other moral criteria. Augustine indicated that the pursuit of self-preservation, for example, could only be sought when it does not prejudice other, higher obligations. Similarly, the pursuit of procreation ultimately had to be pursued within a marriage ordered to the "human society" corresponding to the healthy order of the soul (22.61). In his discussion of the "civic peace" and the justification for war Augustine explicitly disavowed the "long" discussion of just and unjust wars that would be necessary to pursue this natural end justly (22.75). A consideration of these additional criteria revealed the limitations of Augustine's deductive eternal law argument, which presupposed conclusions from psychology and political science, and thereby indicated the investigations we must undertake to grasp Augustine's conception of eternal law

In conclusion we turn to Augustine's more famous, mature statements in the *City of God*, explaining what the discussion of eternal law teaches us about Augustine's conception of the bond of political society and therefore the task of political science and indicating the further investigations in Augustine's writings that are necessary to uncover Augustine's complete understanding of "true, inner justice."

#### *Augustine on the Bond of Political Society*

Our analysis of Augustine's arguments regarding eternal law allows us to shed light on some of his later, more famous statements on politics. In *City of God*, Book 19, where

Augustine compares the “appointed ends” of the two cities, the earthly and the heavenly, he argues that all human action must be oriented toward peace: not only the peace that is eternal life, but also peace “in earthly and mortal affairs [*rebus*]” (19.1, 1-2; 19.11, 1-2, 26-28). He defines the peace sought by the earthly city as “the ordered harmony of citizens in commanding and obeying,” which it “fastens together” in order to bring about “a certain arrangement of human wills in affairs pertaining to this life” (19.13, 8-9; 19.17, 11-15). For Augustine, then, the task of political science or “the science of ruling peoples” (5.19, 61) is to understand the principles and conditions of this consensus. What is it that binds a political community together?

Augustine’s presentations of eternal law have shown us two ways of approaching this question. The discussion in *On Free Choice* led to the conclusion that the temporal law is limited to protecting an arrangement of property that secures the degree of “peace and human society” that is possible in the tide of human vice (1.15.108, 45-48). The fact that the “bond of the city” must be shared by both the good and the wicked means that its principle cannot be the precepts of the eternal law, but merely honesty in the exchange of those temporal goods that the law regulates (1.15.112, 73). The good can assent to this because, while they are ultimately guided by the eternal law, they can see the usefulness of these lower goods and the necessity that limits the law’s function, while the wicked can be turned to obedience by the manipulation of their greed and fear under the threat of punishment (1.15.111, 68-72). The discussion in *Contra Faustum* encouraged us to think about morality in terms of the preservation of the “natural order” that God has created, and therefore in terms of the ends that are conducive to “mortal health” or safety (22.27, 29).



Among these goods Augustine includes the “civic peace” or “public safety” that is secured by political authority (22.74, 75). The principle of the political bond appears to be the “common safety” of the members of that community (22.75). Both of these approaches resonate with the rhetorical thrust of *City of God* 19.17: that the earthly city’s laws administer “those things that are suited to sustaining mortal life” and that the citizens of the heavenly city can share in the harmony of the earthly city on account of their “common mortality,” suggests that the political bond is only an agreement to procure the basic necessities (21-23, cf. *Confessions* 3.9.17, 5-7).

However, we have also seen the limits to this low view of the principle of political community. In Chapter 2 we saw that reflection on even the most basic task of political law—the preservation of the life and property of its citizens—showed such a narrow conception of the political bond to be untenable. The first part of the conversation between Augustine and Evodius showed that even this low task required some members of the community to sacrifice their life and goods for the preservation of others. This notion of duty, we discovered, which the law of every political community assumes in its members, indicates a broader task and justification for political law—the cultivation of *some* moral perfection in its citizens corresponding to the duties it exacts from them. The principle undergirding the political bond must therefore include some way of life that defines the virtues that the community will practice and makes the community worth defending. In Chapter 3 we saw how this conclusion was elaborated in Augustine and Evodius’ discussion of political revolution. There we saw that the common good brought about by a country’s constitution had to be understood in the deepest sense as a virtuous way of life.

We also saw that this moral justification for political law imposed on us the duty not only to discover the virtues toward which the political law must be oriented, but also to consider how any change in law or constitution would affect the practice of those virtues. A similar conclusion was reached in *Contra Faustum*, where we saw that “natural order” and “mortal health” must ultimately be understood as including a certain “ordered society” corresponding to the order and health of the soul in addition to the body (22.61). This means that the administration of political affairs requires knowledge of the effects of law on the souls of people and the knowledge of how to combat vice without encouraging other vices (22.74). In “fastening together” the political bond, then, the legislator or statesman cannot think only of securing the property and bodily necessities, but must think also of the virtues that will suffuse the community’s life; the legislator must possess the practical knowledge to provide for these virtues as much as possible in particular circumstances (*City of God*, 19.17, 12). Augustine’s conception of “peace and human society,” the “order of civic peace,” or “those things that are suited to sustaining mortal life” is in fact more expansive than his rhetoric at times suggests (*On Free Choice*, 1.15.108, 47-8; *Contra Faustum*, 22.75; *City of God*, 19.17, 22-23).

Augustine does not provide us with the fullness of his own view in his writings on the eternal law. In fact, he explicitly refuses to explain or discuss the understanding of distributive or retributive justice that informs that view (*On Free Choice* 1.15.111, 63-65; *Contra Faustum*, 22.74, 8-9; cf. *Confessions*, 3.9.17, 4-9). He has instead given us two ways of thinking about our obedience to law, whether the law of our political community or the law of God. These two arguments have the primary purpose of providing general

guidance for Christians in justifying their own attachments to law and of rebutting the view that attachment to true justice means indifference to earthly affairs. Insofar as these arguments are incomplete or imperfect, they also provide a point of reflection for Augustine's more attentive readers and indicate the paths to a more complete view of justice.

In Chapters 4 and 5 we took up the first of these arguments, the doctrine of eternal and temporal law that Augustine drew out for Evodius in order to harmonize the demands of human law and the law of providence (1.6.42, 1-4). That solution had two parts. The first was a demonstration that the eternal law provides a standard of personal morality that is truly independent of political authority. Augustine and Evodius agreed that true justice would be found in perfect wisdom, but that in our current condition justice is found in a "good will," defined as the desire for an "honorable and correct" life that will eventually attain wisdom (1.12.83, 32-3). This demonstration gave Evodius the confidence that he was in fact living by the light of the eternal law in dedicating himself to moral rectitude as expressed in the cardinal virtues (1.13.97, 97-8). The second part of the solution was to show that the temporal law was constrained by necessity to punish only those actions that directly threatened the basic level of "peace and human society" that could be secured amid the many "lovers of temporal things" who dominate political society (1.15.108, 45-48; 1.15.106, 27-8). Evodius therefore felt justified in obeying the laws that achieve this limited, but genuine, good, free of the bad conscience that would haunt him if he were obeying those laws only out of deference to authority.

The general teaching of *On Free Choice* is that true justice, even the justice of divine providence, judges us according to our possession of the cardinal virtues of prudence, courage, moderation, and justice, which themselves provide criteria sufficient for the guidance of life; and that, while the temporal law cannot maintain this justice, it does perform the essential function of disciplining the vices that make human community impossible. As we saw, the doctrine of moral virtue that is essential to Evodius' self-understanding is in fact beholden to the law of his political community: even at the close of the conversation Evodius' application of the virtues will owe less to an independent notion of "honor" or "right" than to the definitions of those virtues as given by his political community (1.13.93, 49-50; 1.15.111, 64). We also saw that his enthusiasm for these virtues led him to moral extremism, insisting on the power of virtue alone to provide happiness in this life, independent of any external goods. The path taken in *On Free Choice* therefore includes the temptation to magnify the independence and sufficiency of moral virtue and to minimize the moral importance of law (Burns 2015, 296).

In *Contra Faustum* we considered the second of these arguments justifying obedience to law. There the harmonization between true justice and the particular commands of God or political authority is effected by a concept of the "natural order." This "natural order" is understood to manifest the eternal law, which means that justice requires adhering to the natural hierarchy created by God. In the human being, this means organizing every part of man in light of the "image of God" (22.27). From this abstract scheme Augustine draws the conclusion that all pleasures we experience in our mortal life ought to be disciplined according to the standard of "mortal health" (22.29). This

“secondary” standard, from which Augustine draws the further ends of self-preservation, procreation, and civic peace, has a part in this argument similar to that of the principle of “honor” or “rectitude” in *On Free Choice*: it is associated with the highest standard (wisdom or the contemplation of God), although its precise relation to that standard remains obscure, and it overshadows the highest standard as the argument proceeds. Obedience to law is then justified insofar as it serves these natural ends of self-preservation, procreation, and civic peace and thereby contributes to the health of a human being or the human race.

We saw in Chapter 6 how this language of nature and health tended to obscure the more subtle and complicated judgments present in *Contra Faustum*. Even the refutation of Faustus’ more fanatical objections raised questions that were difficult to answer using the categories of “nature” and “health.” The case of self-preservation raised the question of what the precise limits were to the pursuit of this natural end: while Augustine indicated the existence of these limits (22.34 [628:6]; 22.37), he did not discuss them in detail. The cases of marriage and procreation raised the question of what kind of “ordered society” marriage ought to conform to, as well as the question of why Augustine maintained that only the intention to procreate within such a marriage was properly natural (22.61; 22.30 [624:13-16]). The cases of war and punishment raised the question of what exactly constituted the “civic peace” of a community and what measures that God or a political authority could legitimately use in order to bring about or maintain that peace. Augustine showed that this peace is secured not only by obedience, but by the good counsel of rulers who command what is fitting or deserved, but this question of merit or desert was not

pursued in detail. In sum, while the argument in *Contra Faustum* is useful in thinking about the objects that we hope our obedience to law secures and is particularly effective against those like Faustus who are inclined to a pacifistic interpretation of Christianity, it also includes the temptation to obscure the psychological and political investigations that lie behind any specific assertions about human nature and natural ends.

Augustine does indicate in these two presentations of the eternal law where we ought to look for a more adequate understanding of the “true, inner justice” that can truly ground our obedience to political or divine law (*Confessions*, 3.7.13, 17). Both arguments show that the ultimate justification for law is the promotion of virtue or the health of the soul; and both arguments show the necessity of prudence that can make provision for virtue or the health of the soul amid changing political and historical circumstances. *On Free Choice* raises the question of how precisely “wisdom” or a “scientific life” is manifest, along with the “honor” and “rectitude” that accompany and prepare it (1.7.59, 56-7; 1.12.83, 32-3). We know from *Contra Faustum* that Augustine defined wisdom or contemplative virtue in terms of its perception of the “image of God,” and therefore faith. In order to understand Augustine’s own conception of virtue, we should turn above all to the *Confessions*, where he tells how he came to identify wisdom and the “light of honor” with the love of God (6.16.26, 14). We should also turn to *City of God* I-V, where Augustine criticizes the Roman virtue of his day; Augustine’s discussion of Roman political history will also help us understand the relationship between virtue and particular political forms and conditions, as Augustine introduces us to the authors who helped form his own political judgment.



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