

SAINT AUGUSTINE AND THE LEGAL HERMENEUTIC

*Sílvia Alves*¹

Abstract

The method of biblical exegesis proposed by Saint Augustine is one of the groundworks of legal hermeneutics. From the text "Christian Doctrine," one can extract a scientific theory of interpretation that addresses the most intricate issues of contemporary times, such as, for example, polysemy, teleology, and ambiguity, which are obtained from the signs and forms of discourse. Thus, the vectors for legal interpretation, drawn from Augustinian thought, are of unquestionable relevance to today's law science.

Keywords

Letter of the law. Spirit of the law. Interpretation. Legal hermeneutics. Augustine.

Summary

1. Introduction. 2. Elements of legal interpretation based on Saint Augustine. 3. Hermeneutic vectors. 4. Conclusion. References.

¹ Professor, Lisbon University.

1. INTRODUCTION

The hermeneutic model of patristics and the construction of legal methodology are summarized in the maxim: the letter kills, but the spirit gives life². Contemporary reflections on legal hermeneutics and on its historical roots, cannot fail to dwell on the legal-philosophical thinking of the Church and the construction of its own law. To prove this assertion, it suffices to recall that the emergence of university law studies from the end of the 11th century, through the phenomenon known as the revival of Justinian Roman law, which spread from Bologna (*mos italicus*) throughout Europe, also involved canon law. The *ius romanum* was, in fact, the *lex approbata* and *lex saeculi* of the Church. At the same time, common law also incorporated canonical elements, in addition to *the iura propria*. Medieval schools – the school of glossators and the school of commentators () – as well as their respective methodologies were common to both types of law, and this natural alliance or union even had its own name: *Utrumque ius*. Medieval *ars inveniendi* was, in short, shared by civilists, whose training was based on *ius civile* or Roman law, contained in *the Corpus Iuris Civilis*, and canonists, who studied the *Corpus Iuris Canonici*.

In this context, the method of exegesis of the biblical text – which, incidentally, could be used as an argumentative topos by jurists – is one of the cornerstones of legal hermeneutics. St Augustine devoted a treatise – *On Christian Doctrine (De doctrina christiana)*³ – to biblical exegesis, the reading of which may well give today's jurists a singular impression of familiarity.

² It should be noted that in Paul's letters, this hermeneutical command is explicitly stated: "It is he who has made us capable of being ministers of a new covenant, not of the letter, but of the Spirit; for the letter kills, but the Spirit gives life." (2 Cor. 3:6). p.2236

³ Cf. AGOSTINHO 2002; and the bilingual text in Obras de San Agustín, Tomo XV, Madrid: Biblioteca de Autores Cristianos, pp. 54-349. We will cite the work in the body of the text using the Latin abbreviation of the title (*Doctr. Christ.*) and referring to its internal division.

2. ELEMENTS OF LEGAL INTERPRETATION BASED ON SAINT AUGUSTINE

From the treatise *On Christian Doctrine*, we can infer topics that are usually accepted, such as the need for interpretation and a specific methodology for this activity, which constitute the *raison d'être* of the treatise and allow us to glimpse the outline of a true (scientific) theory⁴ of interpretation⁵. But that is not all: Saint Augustine draws attention to the polysemy of words and the natural ambiguity of discourse. In a way, we encounter the intuition of the open texture or indeterminacy of language (e.g. Herbert Hart). The title of Chapter XXV clearly warns that the same word does not always mean the same thing (*Idem verbum non idem significat ubique*). Book III, which is of particular interest to us, precisely addresses the difficulties or ambiguities (*ambiguitas ex verborum*) that need to be dispelled in the texts of Scripture. For many centuries, legal interpretation was identified with the interpretation of problematic, doubtful, or obscure texts, naively understanding that clear law did not need to be interpreted (*In claris non fit interpretatio*). However, there is no trace of this naivety; what is implicitly found is the perception that the interpreter must use the necessary skill (and, therefore, freedom, albeit limited) to distinguish (and, in a constitutive manner, determine) whether the text is clear or obscure. Even in the face of the unavoidable *auctoritas* of the Bible, Saint Augustine suggests neither the unnecessary interpretation of clear text nor a directive of literal

⁴ The status of divine text (*divinarum Litterarum*) recognised in the Scriptures implied their superiority over pagan science. In the Prologue, Saint Augustine begins by affirming the existence of precepts on its interpretation that must be taught, then declaring that the science of pagan books, although useful, is small compared to the science contained in the divine Scriptures (*Doctr. Christ.*, II, XLIII, 63).

⁵ In the same vein, cf. SCHOBINGER 1980, 43-56: “C’est, à ma connaissance, chez saint Augustin qu’on trouve le premier texte systématique digne du nom de théorie de la lecture, sous le titre de *De doctrina christiana*” (p. 46). The author uses the expression “theory of reading” to refer to any text that deals with the act of interpretation as such, whether it takes as its object a specific text (such as the Bible) or a category of texts (p. 45).

interpretation. Moreover, he even warns of the danger of literalism, advising the interpreter to beware of taking figurative expressions literally (Doctr. Christ., III, V, 9). He even considers obscurity useful (*obscuritas scripturae in tropis et figuris quorsum utilis*) to break human pride through effort, as well as the disdain of understanding that holds little esteem for what is easily understood (Doctr. Christ., II, VI, 7).

The same intuition *avant la lettre* can be seen regarding the various elements of interpretation, which Savigny would systematically enunciate⁶. Beyond the literal element, St. Augustine attributes superlative importance to the systematic element. He therefore recommends that obscure passages (texts) be explained by clearer ones (Doctr. Christ., III, XXVI, 37) and that the various passages be clarified by others that precede or follow them. In this way, interpretation builds⁷ the coherence and unity of the text as a whole. Strictly speaking, long before they were effectively pursued by national laws.

“But in the case of two meanings, or all of them, if there are many, resulting in ambiguity, without straying from the faith, we must consult the previous context and the one following the passage where the ambiguity lies. We will see there, among the various meanings that are offered, which is the best or which harmonises best with the text” [*Quod si ambae vel etiam omnes, si plures fuerint partes, ambiguitatem secundum fidem sonuerint, textus ipse sermonis a praecedentibus et consequentibus partibus, quae ambiguitatem illam in medio posuerunt, restat consulendus, ut videamus cuinam*

⁶ Cf. SAVIGNY 1951. Legal Methodology, the product of Savigny's teaching in the academic year 1802-1803, recorded by his student Jakob Grimm, was published posthumously. The theme would, however, be taken up again in the first volume of *System des heutigen römischen Rechts*, published in 1840.

⁷ Also attributing an indispensable character to interpretation according to Saint Augustine, cf. FRYDMAN 2016, 126

sententiae, de pluribus quae se ostendunt, ferat suffragium, eamque sibi contexi patiatur] (Doctr. Christ., III, II, 2)

The historical element is present when it alerts us to the need to consider the customs of the time (Doctr. Christ., III, XVIII, 26). Interpretation must be carried out in accordance with the end (teleological element), which is charity (Doctr. Christ., III, XV, 23), avoiding absurd interpretative results, that is, accompanied by consideration of its consequences. Thus, St. Augustine enunciates the rule according to which, if the divine word, understood in its proper sense, contradicts the goodness of customs or the truth of the faith, it must be interpreted in a figurative sense (Doctr. Christ., III, X, 14).

When St. Augustine enunciates the directive according to which interpretation must conform to the rules of faith (*regula fidei*) – the double commandment of love of God and neighbour – and must also resort to the authority of the Church (Doctr. Christ., III, II, 2), he creates a key to reading the biblical text and, at the same time, the conditions that guarantee the elevation of a unified Christian doctrine. The Scriptures contain within themselves the principle of their exegesis⁸. It is no coincidence that these rules are included in the initial part of the work (Book I)⁹ they demonstrate their full operability in the theory of exegesis. There is a fruitful circularity between the rules of faith and interpretation¹⁰, since these rules or principles guide the hermeneutical process and, at the same time, are formulated and consolidated through it.

⁸ SCHOBINGER 1980, 50.

⁹ The same is true in Origen's Treatise on the Principles, whose fourth and final part contains the oldest treatise on Christian hermeneutics. There, he departs from a principle of literal interpretation, considering that the biblical text admits various levels of reading, culminating in spiritual interpretation. Cf. ORIGENES, 2014.

¹⁰ Alluding to the priority of things or reality (res) over signs or words (verba) and to an implicit hermeneutic circle, cf. FRYDMAN 2016, 126.

For the contemporary jurist, the rules of faith bear an undeniable similarity to the legal principles that best explain and justify norms. In short, Augustinian Christian doctrine constitutes a true system, with all the attributes that were demanded of national laws only with the nineteenth-century codification movement, such as harmony, coherence, and completeness.

For Saint Augustine, interpretation means liberation. Liberation from the slavery of the letter, towards the spirit. Christian freedom (*christiana libertas*) freed servants from signs (letters), although useful, interpreting them and elevating them to an understanding of the realities they represented (Doctr. Christ., III, VII, 12). In a way, the historical stages of interpretation and the interpreter's relationship with the text are described: from the bondage of the letter to the freedom of the spirit.

“To understand a figurative term as if it were said in a literal sense is to think in a carnal way. Now, nothing can be more accurately called the death of the soul than the submission of the intellect to the flesh, according to the letter, for it is by the intellect that man is superior to animals. (...), it is a miserable servitude of the soul to take signs for things and feel powerless to raise the gaze of the intellect above temporal creation in order to fill it with eternal light” [*Cum enim figurate dictum sic accipitur, tanquam proprie dictum sit, carnaliter sapitur. Neque ulla mors animae congruentius appellatur, quam cum id etiam quod in ea bestiis antecellit, hoc est, intelligentia carni subiicitur sequendo litteram. (...) Ea demum est miserabilis animae servitus, signa pro rebus accipere; et supra creaturam corpoream, oculum mentis ad hauriendum aeternum lumen levare non posse*] (Doctr. Christ., III, V, 9)

Augustinian texts seem to convey a certain Platonic contempt for the accidental materiality of the letter (the world of the sensible) in comparison with the spirit (the world of ideas or the intelligible). Perhaps,

however, it would be more prudent to note the understandable prominence of the spirit and, to that extent, only the comparative devaluation of the letter. The superlative relevance of the Revealed Word of God would suffice to make Christian thought incompatible with such contempt. In *Truth and Method*¹¹, Gadamer even saw in St. Augustine the exception – which was understood as a “masterful exaggeration”¹² – to what he considered to be the neglect of language by Western thought. Strictly speaking, Gadamer is seduced by the mysteries of the Incarnation – the *Verbum* became flesh – and of the Holy Trinity, which he uses as a metaphor to translate the relationship between language and thought. Like the unity of God the Father and God the Son, there is an internal unity between thinking and verbalising. Reflection does not precede the linguistic externalisation of thought; thought is always word.

In *On the Spirit and the Letter* (*De spiritu et littera*)¹³, a work combating Pelagianism and in which the refutation of the Manicheans is still present, Saint Augustine teaches that the realisation of justice is only possible by combining the letter, that is, the law – through which man's ignorance is destroyed, teaching him how to live and illuminating his path – free will, imprinted by God on human nature, and divine grace, through which one loves the good.

A just and truly free will is therefore not only an enlightened will without constraints. It is also, through the Spirit, the expression of love for

¹¹ GADAMER 1999, 608-621.

¹² See GRONDIN 2000, 470: “In the chapter devoted to the notions of Logos and Verbum in *Vérité et méthode*, Gadamer, in a masterful exaggeration, will only acknowledge one exception to this neglect of language, that of Christian thought on the Incarnation, as defended in particular by Saint Augustine”.

¹³ Cf. AUGUSTINE, *Grace (I). The spirit and the letter. Nature and grace. The grace of Christ and original sin*, São Paulo: Paulus, 2022; and the bilingual text in *Obras de San Agustín*, Tomo VI, Madrid: Biblioteca de Autores Cristianos, pp. 686-811. We will cite the work in the body of the text using the Latin abbreviation of the title (*Doctr. Christ.*) and referring to its internal division.

God and neighbor; a will that loves goodness. To this end, the human will need the y help of grace. This is, for man, unconditionally, a lesson in humility.

As St. Augustine warns, the phrase from St. Paul's second Epistle to the Corinthians – "the letter kills, but the spirit gives life" (*littera occidit, spiritus autem vivificat*) – can be interpreted far beyond its literal meaning, radiating in a coherent totality of meanings.

More immediately, the letter kills because violation of the precept that contains the prohibition entails punishment or penalty. By punishing the transgressor, it kills. The punishment for violating the letter kills, in fact doubly, because it also kills or negates (in the Hegelian sense) sin.

The letter also kills because it commands and prohibits. Because by creating the prohibition, it also names and generates sin or crime; there is no sin without prohibition. In many passages of Paul's letters, we find this correlation¹⁴.

This verbalisation has the powerful and perverse effect of instilling the desire to sin. After all, as the saying goes, the forbidden fruit is the most desirable. The words we find in St. Augustine are identical. The law, without the intervention of the Holy Spirit, inclines to sin because it stimulates evil desire or appetite with prohibition (Spir. et Litt. IV, 6). The letter then kills because it is joined by transgression, which does not exist where there is no law (*quae nulla est ubi lex non est*).

3. HERMENEUTIC VECTORS.

Finally, Saint Augustine seeks to demonstrate – and this is his main message – that living in justice is a divine gift. Although it does not dispense with human will, justice itself must be attributed to the action of God. The presence of the Spirit, which gives life, makes it possible to love, as if it were

¹⁴ For example: Rom 3:20; Rom 7:7

written internally, that which, written externally, was previously only feared (Spir. et Litt. XIX, 32; XXV, 42). Therefore, the doctrine of the law is a letter that kills if the life-giving Spirit is lacking.

Justice inevitably requires the cooperation of law, free will and grace. From God, man receives the gift of free will, which also belongs to the order of grace. However, this is insufficient on its own. From God he also receives the law because, if the way of truth remains hidden, free will is of no value (Spir. et Litt. III, 5). Through the law, which teaches and threatens (Spir. et Litt. VIII, 13), we receive knowledge of the precepts ordered to a sober and upright life (Spir. et Litt. IV, 6).

Knowledge of the law, without divine assistance, is also not yet sufficient. Saint Augustine illustrates this idea through the Apostle with the one who does not want (detests) the (evil) he does (Rom. 7:20). He understands and recognizes that the law is good; yet he does the evil he does not want to do. Because he does the action he does not want to do, he concludes that it is no longer he who acts, but the sin that dwells in him. The inner man delights in God's law, but the law of his reason struggles against the law of sin, which chains him in his limbs (Spir. et Litt. XIV, 25). Man has the law and his understanding; yet, clearly, this is not enough¹⁵.

It is becoming clear that transgression of the law and injustice mean that man is in a state of slavery. On the contrary, observance of the law and the realization of justice postulate

liberation from the flesh and sin; in a word, genuine freedom: "Who shall deliver me from this body of death?" (Rom. 7:24).

Is it enough, ultimately, to receive from God the law and a will capable of choosing to observe His precepts? For the Doctor of Grace, it is

¹⁵ "Thanks be to God through Jesus Christ our Lord! So then, I myself am at the same time subject by my mind to the law of God, but by my flesh to the law of sin." (Rom 7:25). Bible 1994, 2184-2185.

not formal or outward observance of the law that justifies or makes men righteous. According to St Paul's teaching, the true Jew is not identified by circumcision, bodily and outward, but rather by the heart, and therefore inward or spiritual. God receives those who are physically uncircumcised but circumcised in their hearts; those who keep the precepts of the law out of love for justice and not out of fear of punishment (Spir. et Litt. VII, 13). That is why St. Paul points out that:

"For it is not what is seen that makes a Jew, nor is it the visible mark on the flesh that makes circumcision, but it is what is hidden that makes a Jew, and circumcision is that of the heart, which refers to the Spirit, not to the letter" (Rom. 2:28-29).¹⁶

Men are justified freely—without merit of their own—by the grace of God (Rom. 3:24). Not by the law or by their own will (Spir. et Litt. IX, 15). Justice is, therefore, a pure gift or concession. But it did not manifest itself without the law; it is testified by it (Spir. et Litt. IX, 15). Through the law, God reveals to man the sickness of his will, so that, through faith in His mercy, he may be healed. Justification is, however, the fruit of our will. It is revealed to be sick through the law, and it is grace that heals it. Once healed, it then fulfils the law. Not oppressed and out of fear of punishment, but freely and out of love for righteousness.

It is not surprising, then, that St Augustine understands that the law is not intended for the righteous, but for the unrighteous. It reveals all the fragility of human beings and compels them to seek the help of God's . Grace is not granted because the law has been fulfilled, but so that it may be fulfilled. Not as a reward for good deeds or because one is righteous, but

¹⁶ Bible 1994, 2175.

so that man may become righteous. Not with a retrospective basis, but a prospective one. According to him:

"This is the justice of God, not that by which He is righteous, but that by which we are righteous through Him" [*Haec est illa iustitia Dei, non qua ipse iustus est, sed qua nos ab eo facti*] (Spir. et Litt. XVIII, 31)

The law therefore has an instrumental value; it is like a pedagogue (tamquam paedagogo) and a vehicle (tamquam vehiculo) that leads to the refuge of faith and the grace that justifies (Spir. et Litt. X, 16). Aroused by fear, fleeing from the punishment of the threatening letter, man becomes aware of his inability, without the help of grace, to fulfil the law and be righteous. He is justified by the law of faith through which he believes that it will not be possible for him, due to his fragility, to fulfil the law of works. This is the Augustinian interpretation based on the New Testament, which states:

"My grace is sufficient for you, for my strength is made perfect in weakness" (2 Cor 12:7-8).

By the law of works, God commands, threatening. By the law of faith, the recipient of the precept humbly directs his supplication to God and knows what to ask for if he cannot comply. On the contrary, being able to comply, he must be aware of the source of this gift or blessing. More a child of faith is he who knows from whom to expect what he does not have than he who attributes to himself what he has.

Man is justified not by the precepts of honest living (praeceptis bonae vitae), but by faith in Christ (Spir. et Litt. XIII, 22). Not by the law of works, but by the law of faith. Not by the merits of works, but by free grace. Not by the letter, but by the Spirit.

St Augustine rejects the identification of the law of works with the law of Judaism and the law of faith with the law of Christianity. The determined purpose of fulfilling the law demonstrates, in fact, the absence of incompatibility between the Old and New Testaments. The law of Christ

did not come to abolish the Old Law, but to bring it to full fulfilment. If, on the one hand, the Decalogue, without the help of grace, is a letter that kills (Spir. et Litt. XIV), on the other hand, its precepts must be observed: who will say that Christians should not observe these commandments (Spir. et Litt. XIV, 23)?

St Augustine again turns to St Paul to compare the laws of the Old and New Covenants. Both were written by the finger of God, one on tablets of stone, the other on the hearts of men. One with ink, the other with the living Spirit of God (2 Cor. 3:3). If before the people were forbidden to approach the place where the law had been given, afterwards the Holy Spirit descended upon all those who had gathered to wait for Him. If the Old Law was external to man and distant, the New Law is understood and felt inwardly and, more than close, is true participation in God¹⁷.

The works of charity were engraved on the tablets of the law, to instil terror in cunning and the desires of the flesh. The Old Law is therefore the minister of death and condemnation, while the New Law is the minister of the Spirit and justice, which frees us from punishment. If the former is transitory, the latter is everlasting (Spir. et Litt. XVIII, 31). The promises were once earthly and temporal, goods of the corruptible flesh – although these were figures of eternal and heavenly goods – whereas now the goods of the heart, of the spirit and of the understanding are promised [*nunc ipsius bonum cordis promittitur, mentis bonum, spiritus bonum, hoc est, intelligibile bonum*] (Spir. et Litt. XXI, 36).

It is not the law (the letter) that justifies, and therefore justice does not come from the law. The law makes men transgressors or, if they overcome the fear of punishment, leaves them at the mercy of the desire to sin. The law was given so that grace might be sought, and grace was given to bring the law to full fulfilment (Spir. et Litt. XIX, 34).

¹⁷ Cf. Jeremiah 31:33.

Christ represents a foundational moment of transition. From the Old to the New Testament. From the old to the new man. From the destruction of iniquity to the renewal of justice (Spir. et Litt. VI, 10).

Once the new man¹⁸ has been healed of the wounds of the old (Spir. et Litt. XX, 35), he ceases to fear the law that frightens him outwardly but loves the justice of the law that dwells within him, inwardly, in his heart (Spir. et Litt. XXI, 36). The regeneration of what had been imprinted on man by God and which sin had left faded, though not destroyed, is brought about (Spir. et Litt. XVIII, 48). The veil that covered the reading of the Old Testament is removed with Christ. Then comes the understanding that, incapable by his own strength, it is from the Spirit (and not from the letter) that justification comes.

St Augustine uses soritical reasoning to outline the rhythmic path that leads to the fulfilment of God's justice: through faith, grace; through grace, the healing of the soul; through the healing of the soul, free will; through free will, the love of justice; through the love of justice, the fulfilment of the law.

“Since the law is fulfilled only by free will, but by the law comes the knowledge of sin; by faith, the supplication of grace against sin; by grace, the healing of the soul; by the healing of the soul from the vice of sin, the freedom of free will; by free will, the love of justice; by the love of justice, the fulfilment of the law.” [*Neque enim lex impletur nisi libero arbitrio: sed per legem cognitio peccati, per fidem*

¹⁸ ARENDT 1997, 109-110: "Just as the cry for help is a renewed return to God, so divine grace is the renewed acceptance of the creature that he himself created. This welcoming is equivalent to a new creation (...) By grace, the creature is recreated, since it is freed from its sinful nature, and therefore from the fact of being-in-the-world. (...) God gives himself as distant in law and close in grace."

impetratio gratiae contra peccatum, per gratiam sanatio animae a vitio peccati, per animae sanitatem libertas arbitrii, per liberum arbitrium justitia dilectio, per justitia dilectionem legis operatio] (Spir. et Litt. XXX, 52)

Since the fulfilment of justice depends on grace, and grace is a gift, without merit on the part of man beyond his supplication, St Augustine asks whether grace destroys free will. The answer is emphatically negative; on the contrary, grace strengthens it (Spir. et Litt. XXX, 52). This is undoubtedly a central theme in his work. Grace heals the will through which one freely loves justice. By healing the will, grace replaces the fear of punishment with the love of justice, and man ceases to be a slave to the law to become a son, serving God in freedom (Spir. et Litt. XXXII, 55). The structural elements of freedom are, in fact, received from God: free will (control of the will) and the law (knowledge, wisdom). In short, it is through faith (which is implored) that grace is attained, to heal the sick will and re-establish the law.

Is attaining faith really within our power? Is it a gift from God or does it result from man's innate free will? In other words, is it granted and received, or does it belong to human nature and the rational soul? In either case, why is it not common to all?

St Augustine explains that everyone who wants to do a certain action has the power to do it, or, if they do not want to do it, they do not do it. Action therefore follows the will. Since believing is assenting to what is true and assent is an act of the will, he concludes that faith is within our power (Spir. et Litt. XXXI, 54). He then approaches a paradox, only to deviate from it: if there is no power that does not come from God and if we have nothing that we have not received from Him (including faith), this divine omnipotence could mean that God is the author of sin, which is

inadmissible¹⁹. Understanding that faith is not a divine gift seems to contradict the doctrine that we receive everything from God. Being received from God, the wicked and the unfaithful appear to be able to excuse themselves for not having been granted it.

St. Augustine's response is presented through the distinction between free will and freedom, teaching that the former is the faculty or intermediate force (*media vis*) that aspires and is oriented towards faith or inclines towards unbelief (or infidelity). God grants free will to all, as well as the law, because He grants everyone the possibility of salvation and access to the knowledge of truth. Each person will answer for the good or bad use of this free will (*Spir. et Litt. XXXIII, 58*). God contributes, beyond the free will imprinted in man, with persuasive and suggestive means of calling, but consenting to this call or disagreeing with it depends on our own will (*Spir. et Litt. XXXIV, 60*). Therefore, it says: what one has and what one receives from God comes from Him, but receiving and preserving it is up to the one who receives or has it.

Sin is the sole responsibility of man, as the unfortunate result of the misdirection of the will, that is, the misuse of free will. It is not a fatal or necessary consequence – and therefore not a cause for lack of responsibility – of human nature.

4. CONCLUSION

In summary, free will is granted by God, and man is responsible for exercising it. God's will remain undefeated, either because it is respected or

¹⁹ Conversely, refusing to accept that God, the Good, could want evil, would be to object to His omnipotence. In short, if He can do everything, He can also do evil; if He cannot do evil, He cannot do everything. However, it is not our purpose to deal with the various facets of the paradox of divine omnipotence, as this was not St. Augustine's choice in this work.

because disrespect is punished. If the precept of the law is fulfilled out of fear of punishment and not out of love for justice, it is not observed freely, but with a spirit of servitude (Spir. et Litt. XIV, 26). If the action is inspired by faith and animated by charity—the movement of the soul whose end is the enjoyment of God for its own sake and the enjoyment of itself and its neighbour for the love of God (Doctr. Christ., III, X, 16)—the soul delights in the divine law according to the inner man. This complacency is the fruit not of the letter, but of the spirit²⁰. Never has a question been so rhetorical as when St Augustine asks what the laws of God are, written by in our hearts, if not the presence of the Holy Spirit, who is the finger of God, through whose presence charity is poured into our hearts, which is the fullness and end of the precept (Spir. et Litt. XXI, 36).

As in the past, the work of the Church Fathers remains alive for jurists, and not only for Christian jurists. Firstly, because legal systems are imbued with Church doctrine and canon law, historically one of their formative elements. Secondly, because reading them can be a powerful tool for reflection and even a practical guide for action. Like a very old map, whose roads we unexpectedly find to be passable and leading to our destination. Like the stars that can still guide the lost sailor today.

St Augustine reveals a particular taste for paradoxes. For example, the law prohibits and seeks to prevent sin, but at the same time encourages it. And furthermore: sin, which is evil, can be the path that leads to grace - "Where sin abounded, grace abounded much more" (Rom. 6:20). This does not mean, of course, that sin is useful. As he points out, the more one praises the healing effect of the medicine, the more one detests the disease. The exaltation of grace is therefore the condemnation of sins and offences (Spir. et Litt. VI, 9). Finally, when he asks whether the will to believe is a

²⁰ ARENDT 1997, 113: "To love one another (*diligere invicem*) is the commandment of the law, it is the very spirit of this law that aims at each law individually (...). Love (*dilectio*) is the spirit of all particular commandments".

gift from God, he states that a negative answer would call into question the words of the Apostle, according to which nothing was received except from God, and an affirmative answer would allow the Gentiles to claim that if they do not believe, it is because they have not received such a gift.

Another characteristic feature of Augustine's work is his use of antithetical and partly metaphorical discourse: the old law is opposed to the new law; the old man to the new man; the body to the soul; the letter to the spirit; the law of works to the law of faith; the law of fear to the law of love; the stone tablets to the hearts; death to life; slavery to freedom... The recurring presence of dualistic expositions, which oppose empirical reality to idea, is linked to Platonic inspiration and transcends the works analyzed here, cutting across various themes, whether his philosophy of history (contrasting the city of God with the city of men) or his philosophy of law and political power²¹. There is, in fact, a permanent tension between things as they are and things as they should be, whether regarding man, political power or law²². Reading *The Spirit and the Letter* may suggest, in our day, some analogies and some lessons: (i) the law is not just the letter; (ii) law is more than the law; (iii) law is an instrument of freedom; (iv) law aspires to justice.

In fact, the first rudiments of legal hermeneutics allow the apprentice jurist to realize that grasping or understanding the (true) meaning of the law – or, as is commonly said, the spirit of the law – involves a methodology – which is seen, at the same time, as a technique, an art and a science – that goes far beyond the use of its letter. They even realize that sometimes the best way to subvert that meaning is precisely to make exclusive use of the letter. In this case, very clearly, the letter kills, but the spirit gives life. The literal element is therefore only one of several elements

²¹ Cf. CABRAL DE MONCADA 2006, 56-67.

²² The pessimism with which he views the law as it is (positive law is unjust) does not preclude the duty of obedience, creating a positivist environment, masterfully portrayed by VILLEY 2005, 83-95.

of legal interpretation. It is therefore not surprising that in historical periods when legal hermeneutics became more refined, the principle of the prevalence of logical interpretation over purely literal interpretation became established. In many ways, it is impossible to resist comparing St Augustine's hermeneutical work on the biblical text with legal hermeneutics. In both cases, the texts have a peculiar nature. Both carry unquestionable authority, and both use their own language, which we could describe, to paraphrase Bourdieu, as a theological language and a legal language²³. In both cases, the interpreter aspires to unity of meaning and ultimate coherence. He transcends the historicity of the texts to transcend time through his spirit. The figure of the Legislator overlaps with the material authors of the texts.

And we could certainly persist in the analogies. These aspects mean that interpretation cannot be carried out by a layman, postulating an authorized specialist.

If the law is not just its letter, our apprentice jurist very quickly infers that there may be more law beyond the law, which leads him to the problem of the sources of law. Regardless of other developments, it is irresistible to ask what the value of interpretation itself is. Understanding law as something broader than the letter of the law leads, however, to another intuition that has indelibly marked the history of legal thought: beyond and above the letter of the law that kills, law aspires to spirit and justice, even if sceptics resign themselves to considering it a beautiful dream of humanity. In this context, the jurist will seek not only to serve the (letter of) the law, but to serve justice.

²³ BOURDIEU 1989, 224.

REFERENCES

AGOSTINHO, *A Doutrina Cristã. Manual de exegese e formação cristã*, São Paulo: Paulus, 2002

AGOSTINHO, *A Graça (I). O espírito e a letra. A natureza e a graça. A graça de Cristo e o pecado original*, São Paulo: Paulus, 2022

AGOSTINHO, *Obras de San Agustín*, Tomo XV, Madrid: Biblioteca de Autores Cristianos, 1957.

ARENDT, Hannah, *O conceito de amor em Santo Agostinho*, Lisboa: Instituto Piaget, 1997

Bíblia. Tradução Ecumênica TEB. São Paulo: Loyola, 1994.

BOURDIEU, Pierre, “A força do direito” in *O poder simbólico*, Lisboa: Edições 70. 1989

CABRAL DE MONCADA, Luís, *Filosofia do Direito e do Estado*, Vol. I, Coimbra: Coimbra Editora, 1955.

FRYDMAN, Benoît, *Le sens des lois*, Bruxelas: Bruylant, 2016

GADAMER, Hans-Georg, *Verdade e método*, Petrópolis: Vozes, 1999.

GRONDIN, Jean, “L’“universalité de l’“herméneutique et de la rhétorique: ses sources dans le passage de Platon à Augustin dans *Vérité et méthode*”, *Revue Internationale de Philosophie*, V. 54, N.º 213 (3), 2000.

ORÍGENES, *Tratado sobre os Princípios*, São Paulo: Paulus, 2014.

SAVIGNY, Friedrich Carl von, *Juristische Methodenlehre, nach der Ausarbeitung des Jakob Grimm* (ed. Gerhard Wesenberg), Stuttgart: K.F.Koehler, 1951.

SCHOBINGER, Jean-Pierre, “La portée historique des théories de la lecture (Réflexions à la lumière du *De doctrina Christiana* de saint Augustin)”, *Revue de Théologie et de Philosophie*, III série, V. 112, N.º 1, 1980.

VILLEY, Michel, *A formação do pensamento jurídico moderno*, São Paulo: Martins Fontes, 2005.