

The Four Causes of “*Ius*” (*Res Iusta*) as the Proper Sources of Law

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Abstract

This article explores what causes the existence of law. By applying the classical doctrine of the four causes (material, formal, agent, and final) and their subcategories (such as exemplary cause and ultimate end) to the principal concept of ius, the research reveals that traditional “sources of law” closely align with the metaphysical causes of res iusta (the just thing). These causes include the constitution, statute laws, jurisprudence, traditions, and doctrine, along with new sources such as the common good, the ultimate end, the legal facts, and the Supreme Being. This metaphysical approach provides a deeper understanding of why they are considered sources of law, expanding considerably the list of sources. The article demonstrates how the very existence of law relies on the existence and nature of its causes. If the causes change, the law will change immediately.

Parole Keywords: Sources of Law, Legal Teleology, Causes of Law, Legal Acts, Legal Facts, Justice

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1 INTRODUCTION

If the law exists and is not God, then its existence must have been caused by something. Since the time of Aristotle, philosophers usually resort to four causes (the material, formal, agent and final causes) to explain how things come into existence. For example, the Statue of Liberty in New York is the result of copper, other metals and materials (material cause), shaped into the form of a robed female figure holding a torch and a tablet (formal cause) by its designers, Auguste Bartholdi and Gustave Eiffel, and constructed by hundreds of workers (efficient cause) to exalt freedom (final cause). Without these causes things do not exist. Without copper, female model, workers, or freedom, the statue would not exist, or, at least, it would be different. At the same time, if one cause changes, such as the female model or the aim, the outcome would be different. Each cause contributes to the existence of things and to shape how they are.

This research aims to identify the type of causes that support the existence of the law. There are many things in the legal system that are called ‘law’, each one with its own causes. Throughout history, three notions have been the most used: law as a rule, law as a right,¹ and as law as *ius* (the *res iusta*, ‘just thing’ or ‘what is just’).² In short, the causes of the *rule* (an act or statute) would be the text (formal cause) written on paper (material cause) and approved by the parliament (efficient cause) for the common good of the country (final cause). The causes of a *right* (e.g., to life or privacy) would be the text written in a human rights treaty, approved by the international community, for the protection of the individual. These causes do not align well with the traditional doctrine of the sources of law. Instead, if we apply the doctrine of the four causes to *res iusta*—which is the principal notion of law for Aquinas³—we will obtain the list of all the traditional sources of law, including some new elements such as legal conceptions and legal facts.

This work argues that the metaphysical causes correspond to the main notion of “source of law”, because they give existence to the law, shape the law, maintain the law, and also cause its extinction when they no longer support it. They truly are the *fons iuris essendi*, the fountain (or foundation) of what exists in the legal system. For example, if the parliament does not approve the bill, the bill will never

¹In Spanish, Italian, French and other languages the same word refers to norm, right and the law.

²In this article these three terms are used interchangeably to refer to the same concept.

³Although Aquinas accepts that many things could be called *ius*, he believes that all of them refer to one central notion: the *res iusta*. *Summa Theologica*, II-II, q. 57, a. 1, ad 1.

come into force; the legal fact of a drought in a river can expand the adjacent land, giving its owner more property. No law can exist without a cause or source.

The structure of the research is simple: we will analyze one by one the four causes of law as *ius*. After clarifying some essential notions, Section 3 deals with the constitutive causes (material and formal causes), Section 4 with the efficient cause, and Section 5 with the final cause. By studying these causes, we will explore their respective subcategories. For instance, within the final cause we find ends and means, ultimate and immediate aims, and in the formal cause we can distinguish exemplary and original forms. All these sub-causes are interconnected and serve to support the existence of the law.

In any case, we must begin our analysis by providing a brief explanation of the *res iusta*. This will allow us to assess its four causes with more precision.

2 THE PLACE OF THE “*RES IUSTA*” IN THE LEGAL RELATIONSHIP

Legal realism affirms or presupposes that the law is something real. If so, it must have consequences in the real world. The best declaration of human rights is nothing more than beautiful poetry if, in the end, no one is called upon to protect or respect these rights. Such rights would be checks of an account without money impossible to cash, to use the famous expression of MacIntyre.⁴ Only when we have an owner of a right related to a debtor who must pay one thing (that is, all the elements of the legal relationship), laws, rights, and what is just can appear in the real world.

Within the legal relationship we find several sub-relations between the subjects (owner and debtor) and the object that must be paid, as illustrated in the image below (Figure 5.1).

Here we have: a) the *subjects* of the creditor (or beneficiary) on one side, and the debtor on the other; b) a *thing* that is external (or has extramental manifestations), possible, distributable, and distributed; c) the *environment* where the subjects and the thing are related; and d) a set of relations between them, where we find:

- (i) Two relations between the creditor and the thing:
 - The *creditor-thing* relation of *positive title* generated by the attribution or adjudication of the thing. The creditor can say about the thing: *this thing is mine*. This relation transforms the subject into the creditor (or beneficiary).⁵
 - The *thing-creditor* relation of ‘his due’. If things could speak, the thing would say to the creditor: *I am yours*. Others could say: *this is his thing*,

⁴A. MacIntyre, *After Virtue*, Notre Dame University Press, Notre Dame (IN) 2007, p. 65.

⁵We remember that relations are accidents, and as accidents they add formality to the things.

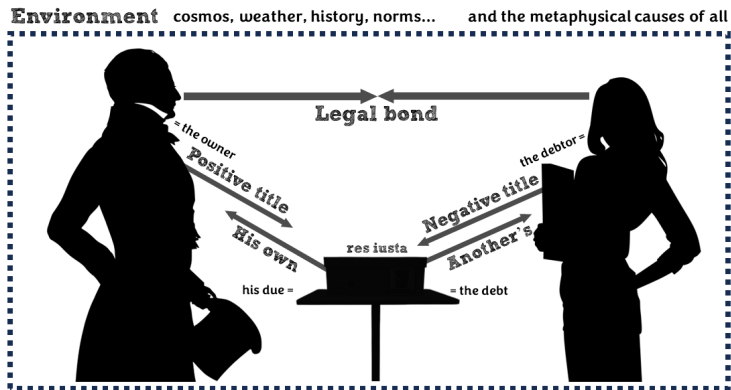


Figure 5.1: Elements of the Legal Relationship

or *this thing is his due*. This relation transforms the thing into the *res iusta*, the ad-justed thing that becomes the object of justice.

- (ii) Two relations between the debtor and the thing:
 - The *debtor-thing* relation of *negative title*. The debtor can say about the thing: *this thing is not mine, it belongs to another person*. The debtor then concludes that there is a duty of payment. This relation transforms the subject into the debtor.
 - The *thing-debtor* relation of ‘*another’s*’ (it must be paid to another person). If things could speak, the thing would say to the debtor: *I belong to someone else, you must pay me to another person*. For the debtor, the thing of the legal relationship is an *alien* thing. This relation transforms the thing into ‘the debt’.
- (iii) The relations between the subjects, which arise around the just thing. Here we find the ‘legal bond’ that binds the subjects. These relations can transform the subjects into ‘the parties’ of a legal business, ‘the authority’ and its ‘citizens’, the ‘judge’, and so on.
- (iv) The relations between the environment, subjects, and things. The environment comprises the causes of the legal relationship (such as legal norms and contracts) and the effects on others generated by this relationship.

Observing the entire legal relationship, it becomes evident that the *res iusta* is the same object of the legal relationship (the *res*) insofar as it is related to the owner owing to a reason of justice (that is why is *iusta*). It will be the object of the

virtue of justice, which aims to give everyone ‘his due’.⁶ This first approach to *res iusta* enables us to foresee three of its causes: while the *res* (thing) appears as the material cause, the *iusta* (an adjective that adds the formality of being just) would be the formal cause.⁷ One more thing could be discovered in the legal relationship: the immediate final cause. The *res iusta* is for the payment: it reveals what must be paid, when, where, and under which conditions.

With these preliminary considerations, we can now delve into the details of its four causes.

3 THE CONSTITUTIVE CAUSES: FORM AND MATTER

According to the hylomorphic doctrine of Aristotle, all things of this cosmos are composed of matter and form. No table can exist without a specific material, such as wood or metal, and a particular form, such as square or round. The Statue of Liberty is composed of 31 tons of copper, 125 tons of steel, and 69 tons of various materials (not counting the base). Without the form, all these materials would merely be *prime matter* and not the statue itself.

Form plays a major role in defining the identity, essential traits, or mode of being of things. It is possible to change the matter of things and preserve their identity, as long as the substantial form is preserved. For example, we can change all the cells of the body, a process that occurs in humans every ten years, and the individual will remain the same. Nevertheless, we cannot replace the head: if we do so, it will become a different individual. Something similar happened to the Statue of Liberty in the repairs of the eighties, where 1350 corroded iron ribs and several layers of paint were replaced. The Statue is still the same but with different materials.

Among the various forms that each thing has, we distinguish substantial forms and others less necessary forms. For instance, dogs and cats can have black or brown fur and still belong to the same species, just as humans can have blue or green eyes and still be humans. All these external properties or forms are grouped around specific individuals (or substances) and manifest what they are. Our size, skin color, skills, and personality (accidental forms) manifest what they are (substantial forms). The same with the erect figure of 93 meters with the shape of a woman holding in her hand a flaming torch (accidents), which shows what the Statue of Liberty is (substance).

⁶For Aquinas, the *ius* as *res iusta* is the object of justice. *Summa Theologica*, II-II, q. 58, aa. 8-9.

⁷Hervada also observes that the relations add formality to the *res*, when he affirms that “in the constitution of the formality of the right [*ius*], two relations intervene: the relation of *yoursness* [*sui*ty] and the relation of debt. Neither of them can be absent if the right is to exist” (J. Hervada, *Lecciones propedéuticas de filosofía del derecho*, Eunsa, Pamplona 2000, p. 232).

In the formal cause, we can also distinguish between the *original form* and the *exemplary form*. Children resemble their parents because their DNA is created by copying the parent's DNA. The latter serves as the model or 'example' that children replicate in their cells. As seen above, the exemplary cause is truly a cause of the real: without the DNA model, there would be no children. The same happens with the Statue of Liberty. Nobody knows well which model inspired the artist. According to some historians, the model was Isabella Eugenie Boyer, the wife of his friend Isaac Singer, as her face bears a certain resemblance. Other sources suggest that the artist simply wanted to reproduce the face of a girl perched on a barricade, holding a torch. The prevailing hypothesis today is that Bartholdi intended to depict the face of his mother, Charlotte Bartholdi (†1891). However, it is also possible that he just made a synthesis of several female faces to give Liberty a neutral and impersonal image. In either case, a female model was required for the creation of the statue.

Therefore, the formal causality can be schematized as follows:⁸

I. Intrinsic formal causation:

- a) *Substantial form*, where the accidents are grounded and subsist.
- b) *Accidental form* (such as quality, quantity, potency-impotency, habit, disposition, relation, action-passion, form-figure).

II. Extrinsic formal cause (exemplary cause).

Now we will apply them to the law.

3.1 *The Formal Cause*

Laws, rights, and the *res iusta* cannot be substances, because they cannot subsist on their own. There is no substance in the universe that deserves in itself the name of *ius*. As already said, the *res iusta* is not only the thing in itself (*res*), but rather the thing insofar as it is just (*iusta*).

Ius and law need another substance to subsist in: mainly the human being. There is no law beyond the human realm. *Ius* and law are not substances but accidents. For many scholars, the accident that best suits the law (as *res iusta*) is the relation.⁹ In the previous section the *res iusta* was defined as 'his due', which implies a relation between the thing and its owner that causes the obligation of payment.

⁸We present here the most relevant sub-formal causes for the aims of the article. For other sub-species of formal and material causes, see J. C. Riofrío, *Metafísica Jurídica Realista*, Marcial Pons, Madrid 2015, pp. 127-198. In general, I follow the classification of J. García López, *Lecciones de Metafísica Tomista*, Eunsa, Navarra 1995, pp. 257-313.

⁹For instance, J. Hervada, *Lecciones propedéuticas de filosofía del derecho*, cit., p. 230.

There are many kinds of relations in this world: romantic relationships, equality, hierarchy, similarity, and opposite relations, among many others. Following Aristotle who identified *ius* with ‘the equal’, Aquinas conceived *ius* as a relation of *certain equality*.¹⁰ Most of the examples found in the *Summa Theologica* revolve around mathematical equality, such as the restitution of exactly the same thing that was taken¹¹ (like the deposited good¹² or the stolen thing¹³), the payment with things of equal value (like the price in sales¹⁴ or the salary in labor contracts¹⁵), and the notion of just punishment implies sanctioning with similar actions.¹⁶ However, Aquinas was aware that certain things could not be compensated with ‘absolute equality’, such as our duties of justice before God and our parents: we cannot repay them for what we have received from them (e.g., life, protection, education), although we must do what we can.¹⁷ This leads Aquinas to shift from the arithmetic equality, which is applicable to commutative justice and compares “things with things”,¹⁸ to a geometric equality in distributive justice, which consists “in allotting various things to various persons in proportion to their personal dignity”.¹⁹

¹⁰ *Summa Theologica*, II-II, q. 57, aa. 1 and 3.

¹¹ “Restitution re-establishes the equality of commutative justice, which equality consists in the equalizing of thing to thing” (*Summa Theologica*, II-II, q. 62, a. 5). On the same page, *Summa Theologica*, II-II, q. 62, a. 2. “The equality of repayment”, is also mentioned (*Summa Theologica*, II-II, q. 61, a. 3, *in fine*).

¹² “... the restitution of a deposit to the depositor is in accordance with natural equality, and if human nature were always right, this would always have to be observed” (*Summa Theologica*, II-II, q. 57, a. 2, ad 1).

¹³ “... justice hinders theft of another’s property, in so far as stealing is contrary to the equality that should be maintained in external things...” (*Summa Theologica*, II-II, q. 57, a. 9, ad 2).

¹⁴ About “the equality of justice” he affirms that “to sell a thing for more than its worth, or to buy it for less than its worth, is in itself unjust and unlawful” (*Summa Theologica*, II-II, q. 77, a. 1). Anyone “is bound to compensate the buyer, when the defect comes to his knowledge. Moreover what has been said of the seller applies equally to the buyer” (*Summa Theologica*, II-II, q. 77, a. 2).

¹⁵ “A man’s work is said to be just when it is related to some other by way of some kind of equality, for instance the payment of the wage due for a service rendered” (*Summa Theologica*, II-II, q. 57, a. 1).

¹⁶ There must be “equality, in order that the punishment may be just” (*Summa Theologica*, II-II, q. 99, a. 4).

¹⁷ About the duty of justice before God, Aquinas says: “when I say ‘equality,’ I do not mean absolute equality, because it is not possible to pay God as much as we owe Him, but equality in consideration of man’s ability and God’s acceptance” (*Summa Theologica*, II-II, q. 81, a. 5, ad 3).

¹⁸ Aquinas observes that in commutative justice “it is necessary to equalize thing with thing, so that the one person should pay back to the other just so much as he has become richer out of that which belonged to the other” (*Summa Theologica*, II-II, q. 61, a. 2). Arithmetical equality means identical things; geometric equality, proportional things.

¹⁹ *Summa Theologica*, II-II, q. 63, a. 1. “Distributive justice considers the equality, not between the thing received and the thing done, but between the thing received by one person and the thing received by another according to the respective conditions of those persons” (*Summa Theologica*,

The ‘certain equality’ of law is essentially an *intellectual equality*. It is the human intellect that *ad-just things* to create the *just thing* (*res iusta*). The *res iusta* is an accident that is created in the intellect and needs the intellect to subsist. This does not mean that this adjustment is purely intellectual, conventional, or fictional. On the contrary, it is based on the things that the human being discovers in reality: hours of work, amount paid, restitution of *the same goods*, and so on. Therefore, formally the *res iusta* would be *a relation of certain equality based on reality where different things are intellectually adjusted*.

What is interesting about the formal cause is that the form can be replicated several times in different matters. Indeed, tourists buy millions of little Statues of Liberty in the stores of New York as souvenirs: they are the same statue, replicated countless times in different materials and sizes. The formal cause of *res iusta* is a relation of certain equality that can be replicated in different places.²⁰ For instance, what is just can be written down in an agreement, mentioned in a statute, or conveyed verbally by the policeman who commands: “You must pay this fine”. The written texts and the speech will be the *material base* in which the *just form* is verified.

In the next section we will explain in detail the material cause. For now, it is enough to realize that the just thing (the relation “someone must return the same deposited good” or “the same stolen thing”) can be materialized in different places: in the mind of the debtor who feels the pressure of the payment, in the mind of the police who knows the law and applies it to the case, in the text of the statute approved by the parliament, and in property law manuals that explain with convincing arguments why things must be returned to the owner.

Going deeper into this point, we can detect that certain forms precede others. No souvenirs of the big statue can be crafted without the Statue of Liberty. The monument of Bartholdi will be the exemplar cause of the souvenirs, something necessary to craft them. At the same time, the text of the traffic law approved by the parliament will be the first form to be copied into the mind of the police and the drivers, necessary to create the belief that citizens are obligated to pay certain fines.²¹

Equality and proportionality are relations that need something to compare, an element called *tertium comparationis*. The statement “Mary is taller than John” presupposes the notion of space. If anyone cast doubts about who is taller, a ruler

II-II, q. 61, a. 4, ad 2).

²⁰On the contrary, the *res*, the material thing itself cannot be replicated. We can stamp many times the same seal (the form), but with different ink (the matter).

²¹R. M. de Balbín, *La relación jurídica natural*, Eunsa, Pamplona 1985, p. 175 observes that the positive norm, “by presenting a certain legal content, is both an efficient and *exemplary* cause of the legal order. The norm becomes the driving force and guideline for action according to a specific legal content and limits”. In his support, the author cites the *Summa Theologica*, I-II, q. 93, a. 5.

to measure them will help solve the problem. That measure or *tertium comparationis* also exists in the law. In a popular dictum, Aquinas has said that properly *ius* is not the rule (*legem*) itself but rather a certain measure of it.²² In a similar way, Suarez argues that *ius* “is not the norm [*lex*], but can be that, the measure prescribed by the legal norm”,²³ to conclude that “the very name of the norm expresses the content of what is just”.²⁴ In both cases, the form of the norm appears as an *exemplary formal cause*, a rule that molds the conscience of individuals and generates particular conceptions (ideas, forms) of what is just and to what extent (measure).

Positive norms, agreements, traditions are *immediate exemplary causes* of what is just because they shape the conscience of people directly. However, they are not *causa sui*, they do not have self-justification. Indeed, people frequently argue that certain laws or agreements are unfair, providing reasons (ideas, forms) not contained in the criticized text. Typically, the argument is presented in this way: “You must pay me a better salary because I work more and better”, or “that bill about the right to life does not respect human dignity”. So, the relation of certain equality appeals to the real value of things: the more the work, the more the salary; the higher the value of life, the more the protection it deserves. In this way, the form of the things shapes the law. This equation is almost mathematical in tort law: whoever causes harm to another must repair that harm (paying for hospital treatments, lost earnings, reputation damaged, and so on), not more, not less. The judge will assess the damages, the value of things, and determine the amount of compensation. In this way, the form of things establishes the exact measure of what is just to pay. Overall, we conclude then that *the form of the real elements* that are part of the legal relationship are *mediate exemplary causes* of what is just.²⁵

“All things were made by Him; and without Him was not any thing made that was made”.²⁶ God is the First Cause of everything, the original and ultimate giver of being, and the first producer of every formality that exists upon the face of the earth. Theology explains creation using the notion of ‘exemplary ideas’ of all the creatures that swarm over the earth: those eternal models of everything that exist in the mind of God. These models not only represent what things are

²²“*Lex non est ipsum ius, proprie loquendo, sed aliqualis ratio iuris*” (*Summa Theologica*, II-II, q. 57, a. 1 ad 2).

²³“*Ius non esse legem, sed potius esse id, quod lege prescribitur commensuratur*” (Francisco Suárez, *De legibus*, Coimbra 1612, 1, 2, 4-6).

²⁴*Ibid.*

²⁵I am referring here to everything that exist outside of the human mind: the cosmos, environment, corporal things, and the people, which are part of the legal relationship. The human nature also contributes to shape the law.

²⁶*John* 1:1-5.

but also preassign what they will be.²⁷ No one gives what one does not have, and no one can inform (provide a form) if previously one does not have that form. Creation happens when God puts his creative will into those exemplary ideas, bringing them into existence. Therefore, in God we find the *Supreme Exemplary Cause* of everything that exists in this world, including the law, all rights and duties, and the *res iusta* as well.

Summing up everything, the *res iusta* is a relation of certain equality (intrinsic form), which has three exemplary causes: the form of things (immediate cause), the form of some norms (mediate cause), and the form of the divine exemplary ideas (ultimate cause).

3.2 *The Material Cause*

We have seen many possible places in which *ius* could subsist. For instance, it can subsist in the black letter of a statute or in a verbal agreement when they specify what is just here and now; in the divine mind, which contains the exemplary ideas, and in things (*res*) inasmuch as they are considered just (*iusta*). The material cause works precisely in that way: multiplying the same form in several materials.

However, the *res iusta* does not appear equally in all places, and does not operate the same everywhere. For example, before the creation of humankind, no one had to pay anything to others, and the *res iusta* existed only as a divine archetype. A similar thing happens in the constitution, treaties, and statutes, where *ius* remains only as a possibility until the moment when two subjects are related in a legal relationship, in which one is required to pay a certain thing to another.

Indeed, the *res iusta* is only born, subsists, and operates well in the intellect. If it is a “relation of certain equality based on reality where different things are intellectually adjusted”, we need an intellect that ad-just things to detect what is just. After detecting what is just, *ius* will remain in the intellect as a *record*: more technically, it will be an intellectual habit, something with an ‘intentional entity’ like an idea or knowledge that could be remembered later. That intellectual habit will be the first cradle of *res iusta*, the first material base in which *ius* is placed.²⁸

The fact that *ius* only is born, subsists, and operates well in the intellect explains many things and has wide-ranging repercussions. First, it clarifies why there is no law beyond the human realm. There is no notion of law in the wilderness; nobody will ask the lion to respect the rights of the gazelle. Second, it also explains why the ignorance and forgetfulness of the law (the *desuetudo legis*), common errors, and generalized “invincible erroneous conscience” tend to cancel

²⁷Thomas Aquinas, *In IV Sent.*, dist. 8, q. 2, a. 1, n. 170.

²⁸Similarly, Aquinas has affirmed that “justice, as a regulating law, is in the reason or understanding” (*Summa Theologica*, I, q. 21, a. 2, ad 1).

its legal demands. If no one in the community knows what is just, no one can demand its respect. Even the Scriptures state that King David was “a man after God’s own heart”²⁹ without criticizing him for having several wives (against *Deuteronomy* 17:17). At that time, no one was in a position to denounce or challenge such behavior. Furthermore, it explains why authors like Jerome Frank³⁰ and part of the Scandinavian Realism³¹ emphasize the psychological dimension of law, although sometimes taking radical positions. Although we admit that psychology exerts a certain influence over human judgments, it only rarely incapacitates the intellect from working with its own logic.

Only after the intellect detects what is just, can other things be called just. A lease agreement shows how it works. Before signing any agreement, consumers usually check the car, ask questions, and measure *what is just* to pay. If they feel satisfied with the lessor’s conditions, they will proceed to sign a contract incorporating there *what is just* for that particular business. That car will be the *res iusta* from that moment on. And when the agreed-upon time expires, the tenant must return the same car, and not another, because that is *the right thing* to do. As seen, the *res iusta* emerges first in the intellect of the parties, then is put into writing in the agreement, and later is reflected in the rented car and in the action of returning it.

Summing it all up, the material cause is where the *iustum* of the *res iusta* subsists. First, it is born, subsists, and operates well in the intellect that adjusts things and discerns what is just. Second, that relation of certain equality affects extramental things (physical objects or actions),³² giving them a fate (e.g., someone will use the car for a while); thus, these things are the *res iusta*. Indeed, people often say: “This is the just thing to do” or “give me what is just”. Third, what is just also can be found in the official gazette, legal journals or manuals, written laws, traffic signs, agreements, and official websites. These texts, symbols, and sites are commonly called “documentary sources” or “material sources of law”. They are genuine sources of law because in those materials we find what is just.

²⁹1 Samuel 13:14.

³⁰Jerome Frank, *Law and the Modern Mind*, Brentano, New York 1930. Ihering analyzes the law in terms of psychic causes, which he conceives as the aims of law. R. von Ihering, *Der Zweck im Recht*, 1877, chap. I.

³¹For instance, Karl Olivecrona, *Law as Fact*, Humphrey Milford, London 1939.

³²For R. Vigo, *Las causas del derecho*, Abeledo-Perrot, Buenos Aires 2009, p. 41, the “mediate material cause” of *ius* is the thing used, the external objects or goods, and the “immediate material cause” is the human action. See also T. Urdanoz, «Introducción a las cuestiones 57 y 58», in *Suma Teológica, II-II*, BAC, Madrid 1956, p. 250. Our view seems more comprehensive.

4 THE EFFICIENT CAUSE

In this cosmos, things do not suddenly appear and disappear. Instead, they come from something and have one end. The shining Sun melts the snow of the mountains, which in turn fills the rivers with fresh water, irrigating in this way the valley where plants will blossom. This example is as simple as insightful. One thing causes the next: the sunlight causes melting, melting leads to water, water results in rivers, rivers irrigate, and irrigation brings forth flowers. In philosophical terms, this means that each agent produces something that is the end of its action (sunlight causes melting); subsequently, the end becomes a new agent that seeks new ends (melting leads to water); and the cycle continues with subsequent ends. All these agents and ends are interconnected in the production of things: the first efficient cause is required to begin the process, and everything moves towards the ultimate end (life flourishing).

Aristotle explains the change stating that whatever is done, is done to produce something (final cause), from something (material cause), and by virtue of something (efficient cause).³³ This virtue encompasses both the action that causes the effect (such as shining, melting, or watering), and the subject which performs that action (such as the Sun, the snow, or the water). The action is the most *immediate efficient cause*, as it is the closest to the effect.

García López orders the different classes of efficient causes according to their hierarchy.³⁴ First is the First Cause, the uncaused cause, which causes its effects without any presupposition. It alone can cause the being of its effects, starting from nothing; this action is called creating *ex nihilo*. Only God can create out of nothing; humans only transform created matter. As the most radical cause of being, the First Cause is present in all the other real causes of being, which are caused causes or ‘second causes’. In the example of the statue, the builders only transformed copper, metals, and bricks into the Statute of Liberty (second causes), but they did not give being to these materials, and do not maintain in the existence these materials today. God *is* (not *was*) the First Cause of their being. If God were to ‘forget’ the Statue of Liberty, it would not ‘go wrong’ for the monument; it would simply disappear, ceasing to exist.

Instead, all second causes need matter on which to act: they cannot create something out of nothing but only transform what was already created. These causes can be categorized as direct causes (*per se* causes) and indirect causes (*per accidens* causes). Direct causes are more perfect and efficacious as they exercise

³³Aristotle, *Metaphysics*, VII, 7, 1032a14-15.

³⁴Cfr. J. García López, *Lecciones de Metafísica Tomista*, cit., pp. 102-103. Efficient causality also admits other sub-species: total or partial causes, caused or uncaused, universal or particular, univocal or analogous, principal or instrumental, necessary or contingent, determined or free. Cfr. T. Alvira, L. Clavell, T. Melendo, *Metafísica*, Eunsa, Pamplona 1986, pp. 203-209.

a positive causation, and they can be subdivided into *principal* or *instrumental* causes. Indirect causes are less perfect since their manner of causing is only negative, removing obstructions.

Hundreds of agents (second causes) were involved in building the Statue of Liberty. The project began in 1865, during a conversation between Frédéric-Auguste Bartholdi and Edouard de Laboulaye near Versailles, which was related to the 100th-anniversary celebration of the United States’ independence. Almost by *accident*, the idea of giving a gift popped up in their minds. After that conversation, Bartholdi began to design the statue, with the assistance of Gustave Eiffel for structural matters (both were the principal intellectual agents). Numerous collaborators joined the project (*proximate efficient causes*), such as the French and American governments who supported the project, the city authorities of New York who negotiated and dedicated Bedloe’s island for the statue (that is why the statue did not end up in Washington DC), and the French and English benefactors who through raffles, lotteries, taxes, and banquets contributed more than half a million dollars for the construction. However, the most *immediate agents* of the statute were the teams of Bartholdi and Eiffel, and the American workers who constructed the huge 48,000-ton base on the island. For that purpose, they utilized picks, shovels, rivets, and other instruments, which served as *instrumental causes* of the statue. Who knows what would have become of the dreamed-of monument without all these agents?

Therefore, the efficient causality can be schematized as follows:

I. Uncaused First Cause, which is God.

II. Second causes:

a) *Direct cause (per se cause)*:

– Principal cause (more or less immediate, proximate or remote to the effect; the closest is the action that produces the effect).

– Instrumental cause.

b) *Indirect cause (per accidens cause)*.

Laws and the *res iusta* need these causes to exist. First and foremost, they depend on God to exist here and now. At the same time, they need several second causes to be produced over time. In the *res iusta*, we can distinguish the causes that produce the *res* (the thing, the material cause of *res iusta*) and the causes that produce the *iusta* (the just, the formal cause). For example, in a rent agreement where the thing is the car, the efficient causes of the *res* are the factory and its workers. These causes do not seem very related to the law. Instead, the causes that produce what is just (*iusta*) in that lease are considered the usual sources of law. These causes embrace the will of the parties (the agreement), the laws that

regulate what is just in leases (the will of the legislator), the car itself whose quality and functionality determine the price, and the understandings and intentions of the parties in that business.

In the example, we detect some elements that are essential to produce what is just, and others that may or may not exist. Certain knowledge and will of the parties are required (they must know what a rent agreement is in order to agree on it), along with the will of the legislator who approves the lease laws. Knowledge and will are *direct and principal causes* of the legal business and of what is just in that business. For the sake of precision, the parties can write down their expectations in a contract, which will be the instrument (*instrumental cause*) of the agreement and of what is just in that business. Finally, the fate of the car also matters: what is just to pay changes drastically if the car is in good or bad condition, if there is an accident, or if nothing bad happens (possible *accidental causes*).

We will analyze here these efficient causes of what is just (the *iusta* of the *res iusta*): the legal conceptions (understandings and intentions), the human will (will of the people or of the authorities), and the things of reality.

4.1 *The Prudent Judgment of What is Just (Most Immediate Cause)*

Only the intellect produces ideas. To produce the idea of *what is just* we need an intellectual operation aimed at concluding that *this thing is just (res iusta)*. This operation is the most immediate cause of what is just: before it, there is nothing in this world that deserves the name of just, *ius* or law.³⁵ After this operation, the conclusion of what is just will remain in the mind as a habit or idea.

Like any operation, it can be performed correctly or with shortcomings. To perform it well, four things are required: (i) certain knowledge of the things that must be assessed; (ii) certain knowledge about the world and the law, which we call ‘legal conceptions’; (iii) a good disposition of the will; and, (iv) a prudent balance of all these elements.

I did not find any author who lists all the things that must be assessed to find what is just. The examples of Aquinas refer to one or two things: in restitutions, people must give exactly the same thing that was taken³⁶ (such as the deposited good³⁷ or the stolen thing³⁸); payments must be made with things of equal value

³⁵This conclusion is also shared by Vigo, who identifies *res iusta* with an action: the “proximate and immediate efficient cause of law [*res iusta*] is the prudential judgment and the will that effectively and really operates what is just” (R. Vigo, *Las causas del derecho*, cit., p. 118).

³⁶See examples provided *supra*, note 11.

³⁷See examples provided *supra*, note 12.

³⁸See examples provided *supra*, note 13.

(like the price in sales³⁹ or the salary in labor contracts⁴⁰), and even the just punishment implies equal actions.⁴¹ In these examples, Aquinas compares “things with things”.⁴² However, in his analysis of distributive justice, he includes new elements such as ‘common weal’, ‘security’, ‘common good’ and ‘dignity of the person’.⁴³ This leads me to conclude that the intellect needs to acquire certain knowledge of all the elements of the legal relationship and its causes (objects, work, subjects, personal situations, laws in force, legal bonds, etc.⁴⁴) and assess them correctly, to be able to conclude what is just.

We tend to be biased in favor of people and things we love, and against our enemies and uncomfortable conclusions. Strong feelings can shape the law!⁴⁵ The human will has such power that when people do not want to understand, they will not understand. People mired in addictions and behaviors that they once regretted, tend to justify them by willpower. The will persistently ask the intellect for justifications for the bad behavior until the intellect becomes exhausted and provides what was asked for. An honest will is absolutely necessary to perceive what is just.

Along with an honest will, a prudent judgment⁴⁶ that adequately balances all the elements of the legal relationship is required to discern what is just. Specifically, this judgment requires: (i) having certain knowledge of the things to be assessed, selecting them appropriately; (ii) detecting the equalities, similarities, and differences that can exist between them; (iii) assessing and ranking them adequately, keeping in mind the ends of the parties, of the law, and of the community; and (iv) concluding what is just in each case.⁴⁷

However, that judgment cannot be processed in vacuum. It requires a certain conception of the world and the law, as we will see in the next section.

³⁹ See examples provided *supra*, note 14.

⁴⁰ See examples provided *supra*, note 15.

⁴¹ See examples provided *supra*, note 16.

⁴² See *supra*, note 18.

⁴³ For example, he asserts that “the equality of distributive justices consists in allotting various things to various persons in proportion to their personal dignity” (*Summa Theologica*, II-II, q. 63, a. 1), and that retaliation does not meet the equality of justice because, although it seems to give back an equal action (injury for injury), it also infringes ‘the common weal’ and ‘security’ (*Summa Theologica*, II-II, q. 61, a. 4).

⁴⁴ They were mentioned in Section 2.

⁴⁵ This thesis appears in R. Rorty, *Human Rights, Rationality and Sentimentality*, in S. Shute and S. Hurley (eds.), *On Human Rights*, The Oxford Amnesty Lectures, Oxford 1994.

⁴⁶ Aquinas has observed that “judgement is certainly an act of justice insofar as it is inclined to judge rightly; but it is an act of prudence insofar as it prefers judgement” and that “the just person gives judgement according to the rules of law by virtue of prudence” (*Summa Theologica*, II-II, q. 60, a. 1).

⁴⁷ For the role of prudence in law, see J. Hervada, *Reflexiones acerca de la prudencia jurídica y el derecho canónico*, «*Revista Española de Derecho Canónico*», 16 (1961), pp. 415-451.

4.2 *Legal Conceptions*

Law, rights, and *res iusta* are ‘late habits’ of the intellect, complex ideas that have arrived very late in our minds. Newborns do not know what is just, and young children gradually learn about it. In order to assess what is just, the intellect must accumulate a great deal of knowledge beforehand. At least, it needs a certain knowledge of the world (of real things, their names and nature, the sense of time, and other things), some legal concepts (including the notions of what is ‘mine’ and ‘yours’, principles like *pacta sunt servanda*, and so on), and certain knowledge about the elements of the legal relationship. All this knowledge that influences the judgment of what is just is here called ‘legal conception’. Let us now analyze its components:

(i) *Knowledge of the world*. Personal beliefs about the physical world, its possible *raison d’être*, the role of humankind in the cosmos, the origin of the universe, and the fate of the person profoundly shape how people think. These ideas are usually intertwined in a more or less coherent framework (the *forma mentis*) that will filter the future reception of information and ideas, legal or not. For instance, if women are not well considered in one society—a grave mistake that has persisted for centuries—the balance of elements assessed to determine what is just will be tipped in favor of reducing their competencies, functions, and rights.

Human knowledge is built in layers. The first layers appear in the early stages of existence when newborns touch reality with their senses. From that sensory input they will form the first *concepts*, such as ‘This is a tree’, ‘this is a dog’, or ‘this is green’. Combining concepts, the layer of *judgments* (such as ‘the tree is green’ or ‘the dog bites’) emerges; and connecting judgments, syllogisms and complex *arguments will create* a new layer. Finally, well-assembled set of arguments shared with scholars produces *schools of thought*, and when they are tested over time, they become *intellectual traditions*.⁴⁸ Our intellectual biography represents only a small thread entwined in the history of thought.

Each level of knowledge carries significant legal implications. For instance, erroneous conceptualizations of reality (e.g., about the dignity of man or woman), false arguments (e.g., slavery is good), detrimental schools of thought (such as the Nazi ideology), or problematic traditions (like the Aztec’s human sacrifices) can distort the notion of what is just. In any case, for the good, the bad, or the worst, all these *conceptualizations, judgments, cultures, and traditions are properly sources of law*.⁴⁹

⁴⁸In A. MacIntyre, *After Virtue*, cit., pp. xii-xiii, the author states that ultimately moral disputes take place within and between rival traditions of thought. These intellectual traditions are inherited stores of ideas, presuppositions, types of arguments, and shared understandings and approaches.

⁴⁹About the *labelling approach* and the influence of language in the law, see W. Hassemer, *Derecho Penal Simbólico y protección de Bienes Jurídicos*, in *Pena y Estado*, Ed. Jurídica Conosur, Santiago

(ii) *Legal knowledge and doctrine*. The degree of legal knowledge of each individual deeply affects how they deduce what is just. It is easier to excuse a child that did not stop at the pedestrian red light than an adult. In some places, foreigners are occasionally excused from obeying certain local laws, and many civilizations with low public morality accepted in the past the Law of Talion (“an eye for an eye, a tooth for a tooth”) as their best legal standard.

Legal knowledge can be received or developed by the individual. On the one hand, it can be transmitted through the family, educational institutions, or society as culture is transmitted through these channels. On the other, it can be created through *evidence*, *experience*, or legal arguments (*reasoning*) about what is just. Sayings like “one must not harm”, “pacts must be fulfilled”, or “he who causes damage pays”, which have been constantly repeated throughout different centuries and cultures, are manifestations of what is evident in the law for everyone.⁵⁰ Today some authors have postulated a new source of law: the *sudden law*, a law approved by the unanimous behavior of the mass. If everyone believes that a certain action is just, it is likely because that conclusion is self-evident.

Experience is a source of law because it allows us to know the law. Often, people only discover what the traffic law commands after receiving a ticket with a fine. Holmes had no qualms in asserting that “the life of law is not logic, but experience”.⁵¹ More than rejecting the use of logic, the phrase emphasizes the significance of experience. The phrase becomes more meaningful under the light of his bad man metaphor: through experience, the bad man becomes well aware of what is allowed and what is forbidden in real life, regardless of what the experts say in the books.

Legal argumentation is another source of law, normally called ‘doctrine’ (or legal doctrine). Lawyers present *learned opinions* in courts to prove the validity of their arguments with more arguments. Depending on where the focal point of the analysis is, this argumentation could be named *legal hermeneutics* when the argument is based on the interpretations of positive laws, *legal teleology or axiology* when the argumentation draws conclusions from the ends or values of the legal system, and *legal theology* when the starting point of the argument is faith.⁵² *Common opinions* and *legal customs* are also sources anchored in certain communitarian knowledge, which is less articulated.

1995, pp. 23-36. For the rest of these sources, see J. C. Riofrío, *Metafísica Jurídica Realista*, cit.

⁵⁰The global law approach studies aphorisms to grasp the universal gist of the law, the legal principles shared by every culture on history. See R. Domingo, *Principios del Derecho Global-1000 reglas, principios y aforismo jurídicos*, Aranzadi, Pamplona 2006.

⁵¹O. Wendell Holmes, *The Common Law*, in *The Collected Works of Oliver Wendell Holmes*, ed. by S. Novick, University of Chicago Press, Chicago 1995, p. 115.

⁵²See J. C. Riofrío, *¿Puede la fe aportar algo al derecho? La respuesta de la teología jurídica*, «*Ruptura*», 54 (2011), pp. 587-624.

Legal knowledge can be either true or false, and in both cases it could be a source of real law. False knowledge (a belief contrary to reality) concerning the law is called an “*error of law*”. These errors have a certain impact on society, which often treats them as ‘true law’ when they are generalized: *common error facit ius*, states an ancient aphorism. However, they only have a temporal effect: once the error is discovered, its effects tend to disappear.

(iii) *The concrete knowledge of the elements of the legal relationship. Workers who are unaware of the policies and laws in force in their specific place of work may struggle to determine what is just in their situation. As already said, a certain knowledge of all the elements of the legal relationship is essential to discern what is just in each context.*

There are two genres of elements in the legal relationship: one deals with the physical elements of reality (the people, objects, the physical environment, and the history of the community), and the other with all the intramental elements (such as intellectual relations, the notion of bonds, rights and duties, and the legal decisions of the will). We will begin by analyzing how reality shapes legal conceptions.

4.3 *Physical Extramental Reality*

As seen in the previous section, physical reality provides some important inputs to form concepts, notions, and arguments, which end up creating a legal conception. We observe here that they efficiently cause what is just in two different ways: being and changing.

(i) *The being of extramental reality.* Certainly, part of the *res iusta* and the law is constructed by the human mind. However, not everything here is mere fiction. Reality remains the ultimate point of reference in legal cases and determines what people can do with things. For instance, people can buy, sell, or lease cars for terrestrial transportation and ships for navigating the sea, but not cars to navigate or ships to drive on the street (at least not the typical ones). Something similar happens with the value of things required to assess what is just. Their value is determined by both the human will and reality: in case of need, a diabetic patient would pay one gram of gold to obtain one gram of insulin (here the certain equality of *ius* is discretionary); nevertheless, no one would equate one gram of gold with one kilogram of the same metal.

In short, extramental reality becomes an *indirect efficient cause* of the *res iusta* when it shapes the legal conceptions required to evaluate what is just. Reality imposes its forms and limits on the intellect: everyone knows that plain screws need plain screwdrivers, and square screws need square screwdrivers. Hardware sellers must know and clearly inform what things are for.

(ii) *The change of extramental reality* also determines what is just in a dynamic

way: creating new relationships, changing previous ones, or extinguishing them. For instance, the birth and death of people bring about the birth and extinction of many legal relationships. Changes in the things that are the object of the legal relationship (when cows have calves, a computer is broken, or a thing disappears) alter what is just or right in the relationship, creating a new set of rights and duties. The same happens with the environment. While a flood decreases the commercial value of the land, a drought increases the extension of the land that borders the river and its value too. Some facts create rights, others extinguish them.

Changes in extramental reality can be intentional (willed by the human being) or unintentional. When no human will is involved, such changes are called *legal facts*. On the contrary, if the changes have been brought about voluntarily, we are faced with *legal acts*, which we will address in a moment.

4.4 *Legal Activity of the Will*

By far, the two most recognized sources of law are: the law approved by the authority and the agreements signed between two or more parties. We can add here other acts of the power of the will that create the law, such as some unilateral personal decisions (e.g., an oath, will, or complaint), crimes, and negligent behavior (e.g., causing car accidents or loss of profits) which undoubtedly have legal effects. All these acts of the will, fair or unfair, shape what is just creating rights and duties among the people. Because of this, they deserve the name of “sources of law” or, more technically, “efficient sources of law” and of the *res iusta*.

5 THE FINAL CAUSE

Final causality is that which marks the goal, the point of arrival, the being that is hoped for, and the perfection to be attained. All things in this cosmos move towards an end. This is evident in free actions intentionally performed to achieve one goal, but it also happens with all galaxies, stars, planets, animals, plants, organs, and things because *the end is always the cause of order*. If science has enough evidence about the order that exists even in the smallest atom, we have enough evidence that there must be an end behind them.

Let us remember the example of the shining Sun that melts the snow on the mountains, filling the rivers with fresh water and causing the irrigation of the valley and the blossoming of plants. As in the agent causes, the final causes also connect many elements. We can detect here the first aim of the Sun (shining), some middle-ends (melting snow, watering, irrigating), and the ultimate end of everything (the flourishing of life). In final causality, the middle ends are also called ‘means’.

From a certain point of view, the end is identified with ‘the good’. Things are considered good simply because they exist (ontological goodness) or because they lead to another point of arrival. For example, while a living flower is good and beautiful just because it exists, sunlight and water are good because they nurture and enable the flourishing of life (they serve as *means* for that purpose).

Therefore, the final causality can be schematized as follows:

- I. The absolutely ultimate end, or supreme end (God).
- II. Intermediate ends (not completely ultimate).
- III. Proximate or immediate ends.
- IV. Means (useful goods).

Why did Bartholdi, Eiffel, their teams, and all the aforementioned agents work so hard? The first reason was to build a colossal statue, not for pleasure but for giving a gift to the United States (therefore, the construction was a *means*). In turn, that gift was not given without any reason but to celebrate the one-hundredth anniversary of the independence (*proximate end*). However, there is more. From the conversation of 1865 near Versailles, in which the idea of the gift came across, it was clear what the Statue of Liberty was for. In that conversation Bartholdi said: “I will fight for liberty, I will ask for it from the free peoples. I will try to glorify the Republic there, until I find it among us one day” (then, liberty was an *intermediate end*). We can even add an *ultimate end*, God, because freedom, nations, and every beautiful thing in this world exist for the glory of their creator.

The same final causes apply to the *res iusta* and the law. What is the just thing for? Why does the human intellect ad-just things according to a certain equality for? Immediately, it *serves* to show what the parties of the legal relationship must pay, what kind of rights and duties each one has according to justice.⁵³

Now, the parties do not want to know what their rights and duties are for solely intellectual purposes, to become wise and learned. No, this knowledge serves as a *means* that enables each party to attain certain goods (such as money, a car, or groceries, which are *proximate ends*). From a more holistic point of view, we realize that all the parties negotiate and seek not only their personal goods, but also move towards what is good for all of them (the *common good*). The laws of a country also tend to achieve this *intermediate end*: the good of all citizens. Authorities want that not for the sake of being good managers who distribute the goods appropriately; professional management is not an aim in itself but a means for something else. People, society, and authorities seek to achieve the common good for the sake of an *ultimate end*, which has received many names,

⁵³In J. C. Riofrío, *Metafísica Jurídica Realista*, cit., we provide expand the argument. For example, we notice there that *ius* is an accident that exists, as all accidents, *for the sake* of the substance (then, it is a *means*). If the substance is the human being, we deduce that the law is for man, and not man for law.

such as happiness, human flourishing, personal fulfillment, and love. As seen, the law, the *res iusta*, and the entire legal system move towards “the pursuit of happiness”, as the U.S. Declaration of Independence states.

All these ends provide coherence and reasonability to the legal system. They must be considered sources of law because there is no law without an end. Each of the four causes produces the things of this cosmos according to their own way of being: the constitutive causes (form and matter) constituting the thing, and the productive causes (agent and final causes) producing the thing. Specifically, the end causes the result “as the arrow is shot to its mark by the archer”.⁵⁴ The most important of all causes is the end, for the sake of which everything exists and is performed. If the personal good, the common good, and happiness do not exist, nothing will make sense in the law.

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⁵⁴*Summa Theologica*, I, q. 2, a. 3.

