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# Punishment and Reconciliation: Augustine

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Punishment and Reconciliation: Augustine

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Punish the sin, not the sinner; easier said than done. Preaching on the second Psalm and purporting to address ‘all who judge the earth’, Augustine wrestled with the problems attending punishment and reconciliation. The results recorded in his sermons and correspondence as well as in a few treatises perplex yet are worth considering before we investigate Augustine’s more explicit remarks on the punishment of Donatist dissidents resisting reconciliation with the African church from which, he insisted, their predecessors had seceded in the early fourth century. At stake during Augustine’s tenure as bishop, toward the end of that century and three decades into the next, was the influence of Catholic Christianity in provinces that supplied Italy with much of its grain, with many delicacies, and with olive oil, prepared for export in Augustine’s see, at the port of Hippo, as well as in Carthage.<sup>1</sup>

Augustine began one sermon, which was probably preached late in Carthage in the second decade of the fifth century, rather far from the magistrates who ‘judge the earth’. It opens with an appeal to ordinary Christians who were encouraged to tame their discreditable instincts--interpreted as their ‘earth’ or clay. Augustine reminded them of the Apostle Paul’s imperatives, specifically that faithful followers ‘rule that earth [they] carry’ as their bodies (*Enarrationes in Psalmos* 75.8).<sup>2</sup> Keen on the virtue of self-discipline, Augustine was under no illusion that the faithful were able to resist temptations and suppress shameful cravings. To oblige the apostle and their preacher--to grip ‘the rod of discipline’, he said elsewhere--they would have to believe in and to ‘lean upon the staff of God’s mercy’ (13.1-3).<sup>3</sup>

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<sup>1</sup> Sermon 13. Embedded citations to Augustine’s work hereafter give the book, section, or chapter numbers used in editions, the most accessible of which on-line is at <http://www.Augustinus.it/latino/index.htm>, drawn from vols. 32 - 45 of the *Patrologiae Cursus Completus. Series Latina*, J.-P. Migne, ed. (1844 -1864) Paris: Garnier. See Lancel (1999, 211-16), for the economic importance of North Africa at the time. References to the sections of Sermon 13 in the next few paragraphs in the text are placed in parentheses.

<sup>2</sup> ‘*terram quam portas rege*’.

<sup>3</sup> Also see sermon 366.6 (*‘in baculo misericordiae fidenter incumbere*’), commenting on 1 Corinthians 9:26-27.

The sermon's transition to judgment and punishment in what Augustine called 'the widely accepted sense' is not smooth, but he retained his emphasis on humility. Magistrates and princes had been elevated above the ordinary, yet they were still 'earth judging earth', which was Augustine's way of saying that they had feet of clay (13.4). They needed instruction; before punishing others they were to punish themselves. Augustine started explaining that lesson by referring to Jesus' encounter with the Pharisees in the eighth chapter of the Gospel of John. They had taken an adulterous woman to him. He had not objected to the law requiring that she be stoned. Instead, he asked only that those who punished her sift their conduct to ensure they were without sin (13.4). Justices, the sermon continues, should live well. Augustine knew that they had frequently paid for their positions, yet he allowed that some simply purchased opportunities to serve (13.6-7). What was far more important to him than the merit or money responsible for the justices' appointments was their readiness to judge themselves. 'Sit in judgment of yourself', he told magistrates, commending a regimen of introspection.<sup>4</sup> Twenty years earlier in his *Confessions*, he more elaborately discussed memory as an instrument for retrieval, for sifting expectations as well as prior commitments. Augustine's sermon, in 418, was less concerned with the technology of self-sifting and more interested in the result, repentance. Magistrates should have experienced torment after their self-inventories, for they were 'of the earth', susceptible to temptation. Augustine would have them condemn themselves, follow that sentence with repentance, and thereby 'punish sin penitently' (13.7).<sup>5</sup>

Introspection, self-lacerating criticism, and repentance prepared magistrates to judge others in such a way that they could assail sins yet save sinners. Augustine's sermon promptly (and rather oddly)

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<sup>4</sup> 'te esto iudex in te'.

<sup>5</sup> 'bene audisti si sic audisti, et procul dubio paenitendo peccatum punisti'. For memory, see Augustine, *Confessiones* 10.8 and Hochschild (2012, 139-49).

follows that formula, with a distinction between sinners and persons, as if he were vexed by the distinction between sinners and their sins (13.8). God makes the persons who make themselves sinners, Augustine explained, and the latter were especially egregious when they persisted in sin, despite magistrates' and prelates' efforts to reclaim them. Even those who refused correction, however, were not to be executed. Augustine placed a limit on punishment; capital punishment extinguished all hope for the sinners' repentance and reconciliation. Magistrates could be formidable without becoming ruthless. Compassion kept souls breathing, souls that could yet be saved more meaningfully--eternally--by their contrition and reconciliation. Augustine trusted justice was served by mercy and lost or destroyed when sinners were destroyed along with their sins (13.8).

He would have had magistrates apply parental pressure. He was not about to scatter additional caveats and to fit various penalties to crimes, leaving specific directions underfoot for magistrates to trip over or closet away. Better, he apparently figured, to tease general prescriptions from what he imagined to be perfect parental practice. In families, shame, he said, was more effective and humane than fear. Clemency caused progeny to be ashamed of having offended loving, lenient parents. But kindling fear in their children did parents little good, Augustine noticed; fear enraged rather than calmed and corrected youth. Discipline was indispensable. Turning a blind eye to impudent and unruly children was hardly a sound strategy. Augustine's sermon insists that cruelty was kindness under some circumstances. 'Even when a father strikes [his child], he expresses love'. To let children go unpunished and undisciplined was to let them run to their ruin (13.9).<sup>6</sup>

Augustine's sermon proceeds from self-discipline to the preparation of magistrates, and finally to the family woodshed, but it hovers above the smoldering, still irksome crises of his time that punitive measures were introduced to resolve. He did not remain aloof from them, so we cannot; it is

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<sup>6</sup> *'pater et quando ferit, amat'*.

inconceivable that one can study his responses to several of those crises, moreover, without confronting controversial questions about his perception of the relationship between the government's authority to punish and the church's role in reconciling sinners, secessionists, heretics, and pagans to its influence.

Controversies surface whenever historians, historical theologians, and ethicists consider to what extent and how warmly Augustine had welcomed secular political intervention in the life of the church. Christoph Horn (2010) and Charles Mathewes (2010), for example, concede that Augustine only reluctantly summoned magistrates to punish threats to the faith and damages to particular churches. Horn's Augustine thought that magistrates' measures were 'morally flawed but functionally necessary', that the safety of African Christians and the unity of their church depended on their enemies' fear that magistrates would aggressively punish obstinate secessionists and pagan thugs. Augustine's caution on that count nearly disappears, however, from some studies. Peter Burnell's, for one, maintains that the bishop embraced magistrates as allies. Burnell teases from Augustine's comments on political authority what he calls 'an essential continuity' between punitive measures required to keep the peace and 'the unavoidable necessity' of punishing sinners to reconcile them to Christianity. That continuity develops, on Burnell's watch into that religion's consonance with the demands of citizenship. His premise is that Augustine interpreted the incarnation as having been (and continuing to be) 'elaborated in human society'. Hence, citizenship became part of a Christian's duty to the divine. 'The religious and political are not ultimately distinct'; 'all civil society is religious'. Magistrates, in effect, had become the faith's and the church's *ex officio* diocesans, wielding 'the sword' to preserve public discipline.<sup>7</sup>

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<sup>7</sup> Burnell (2005, 136-37, 148, 159). Von Heyking (2007, 677), sifting recent interpretations of Augustine, proposes that Burnell's book 'takes the strongest view' connecting public policy with political theology. My study suggests not only that Burnell understates the importance of Augustine's emphasis on the contrasts between the political and the celestial or eschatological but also that those contrasts signal Augustine's acquiescence to the role of government in punishment and reconciliation was more grudgingly given than others have assumed.

One could read Augustine's scorching criticisms of Donatist Christian extremists as attempts to transform the government's courts into church tribunals and to justify magistrates' punitive measures. The extremists, he said, made common cause with thugs known as circumcellions, who acquired their name, it seems, by frequenting if not billeting around the rural shrines commemorating Christianity's martyrs (*Contra Gaudentium* 1.28, 32).<sup>8</sup> Many were soi-disant martyrs, who risked death to provoke reprisals, Augustine said, portraying them as vagrants-turned-terrorists intent on discrediting Catholic Christians, victims-turned-persecutors. A government edict in 412 suggests that the thugs were something more than a disorganized collection of criminals but less than a terrorist network. Predictably, Augustine's references, which constitute most of what we know about the circumcellions, have them often drunk and easily stirred to action by prominent Donatists, notably Bishop Optatus of Thamugadi, who joined the short-lived African rebellion against Rome in the late fourth century (*Contra epistulam Parmeniani* 2.9, 19; epistle 185.12). Another Optatus, Bishop of Milevis in Numidia, who was writing against the Donatists before Augustine returned to Africa--before the rebellion--described the circumcellions as 'crazed'; Augustine wrote about armed and fanatical flocks that Donatist extremists turned to their purposes, turned against not only the Catholic Christians but dissidents within--and secessionists from--their own sect.<sup>9</sup>

He also wrote about extremists and circumcellions to embarrass Donatist moderates. Early in the fifth century Augustine was not yet convinced by his Catholic Christian colleagues that government

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<sup>8</sup> '*cellas circumiens rusticanas*'.

<sup>9</sup> See Optatus, *De schismata donatistarum* (1996, 3.4: *insanientes*); *Contra epistulam Parmeniani* 2.3, 6; and *Contra Cresconium* 3.49, 54. Brent Shaw (2004), (2006), and (2011, 630-664) rightly suspects that the descriptions of circumcellions' 'binge drinking' and excessive violence were exaggerated to shame the Donatist moderates and to justify the government's intervention. Yet Augustine's accounts are probably not as "fictive" as Shaw suggests, although the traditional scholarly accounts tend to be a tad too trusting; see, for example, Diesner (1964, 81- 90); Frend (1985, 172-78, 257-63); and Kriegbaum (1986, 152-54). But also consult Kaufman (2009) and Barreteau-Revel (2010).

intervention and punitive measures (fines, confiscations, incarcerations, and exiles) were necessary to reunite the African church. He believed he might nudge moderate secessionist bishops with arguments drawn from the sacred literature Donatists and Catholics alike respected. Appealing to Bishop Emeritus of Caesarea, he warned that persisting in schism was heresy. Persistence, moreover, defied authorities entrusted with the church's welfare. Augustine reminded Emeritus of the fate of Hebrew insurgents--of Dathan, Abiram, and their confederates--whom God punished mercilessly. Most died by fire; the two ringleaders were swallowed by the earth. The episode, drawn from the Pentateuch, was timely and telling, not just because Emeritus and other Donatist moderates refused to reconcile but also because they refused to condemn the aforementioned Optatus of Thamugadi, who had been executed after he linked the fate of his church with that of an abortive rebellion against Rome. Augustine then shrewdly switched from talk of God's wrath in sacred texts and the grim fate of Emeritus' notorious colleague to approach his correspondent's predicament more sympathetically. The moderates' refusal to denounce Optatus, he suspected, was motivated by their desire to avoid dividing Donatism. Though the rebellion was reprehensible, Emeritus' failure to censure his colleague was understandable: Augustine admitted that Emeritus could not have snubbed Optatus without creating factions and undermining Donatism's consensus and continuity. Yet such qualms, he argued, should lead Emeritus to reconcile with Catholic Christians, from whom the first Donatists seceded after condemning and shunning Bishop Caecilian of Carthage in the early fourth century (epistle 87.4).

Caecilian had been accused of befriending colleagues who collaborated during the persecution that preceded Emperor Constantine's conversion to Christianity. To Christians whose faith was anchored by their admiration for confessors and martyrs, Caecilian seemed to honor their heroes too temperately, if at all. Furthermore, one of the colleagues he asked to participate in his consecration, Felix of Apthungi, had been accused of collaborating with persecutors. Dissenters protested to the new Christian emperor who referred the matter to a council of European prelates, over which the Bishop Miltiades of Rome

presided. The verdict acquitted Bishops Felix and Caecilian. Dissenters pressed for another chance to prove their case, and a second church council was called at Arles in 314. The dissenters, again frustrated, returned to Africa and elected an alternative to Caecilian who, from their perspective, had seceded from the authentic Christian church that properly valued Jesus' suffering, prized martyrdom, and survived for centuries without government interference. Augustine pointed out an inconsistency; dissidents--by then known as the *pars Donati* or Donatists--had themselves appealed to the government against Caecilian's cohort. Also, by the time Augustine had returned from Italy and began to write against them, Donatist Christians outnumbered the Caecilianists or Catholic Christians, thanks, in large part, to the long tenure of their most enterprising bishop of Carthage, Donatus of Casae Nigrae (313 - 355). Despite Donatists' numbers and persistence, for Augustine, the results of the two early fourth-century councils cinched matters (*'pro me sunt gesta omnia'*): Caecilian was acceptable, bishop of the African Christian church, recognized in the rest of Christendom; Donatism was a regional and secessionist sect. (Dolbeau, 1996, sermon 2.22). For their part, Donatist extremists and moderates alike considered the Catholic Christian church fatally flawed and unable to convey God's grace in their sacraments. Caecilianist bishops, much as Caecilian, had nothing to offer the laity. They forfeited their right to baptize or to absolve--Caecilian, because he was a collaborator or friend of collaborators long ago and those who remained loyal to him and traced their grace (in baptism, ordination, or consecration) to priests and bishops loyal to him. The Catholic Christian church, Donatists professed, was corrupt; its bogus bishops were powerless. And, as just noted, late in the late fourth century Donatists were more numerous than the Catholic Christians in at least two of Rome's African provinces. Yet the fragments of their polemic that survive in Augustine's replies betray what historian Elena Zocca (2004) calls a fortress or siege mentality. They claimed that sin and error prevailed beyond their basilicas, that Jesus's heroism was commemorated and divine grace available exclusively within them. Persecution was their *thème préféré* (Lamirande, 1998, 217). They assigned guilt to others, boasted of their innocence, and touted their defiance of the government.

Donatists seemed less troubled than Augustine about their isolation. He was upset by their interpretations of biblical passages that, in their polemic, lifted their regionally concentrated sect above the faith's many other congregations in and beyond North Africa. And he was increasingly impatient with the Donatists' disaffection: they ought to connect with churches elsewhere, ideally willingly but, if necessary, coerced into communion (sermon 46.37). In the 380s, Emperor Theodosius I decreed that Christians who had not embraced Catholic Christianity were disreputable (*infames*)--beyond the pale. Augustine would have preferred not to coerce the Donatists into submission, conformity, and reunion. 'Who doubts,' he asked, 'that it is better to be taught and persuaded than to be compelled' to conform? Yet, as his correspondence with Emeritus suggests, his successes persuading Donatist moderates were negligible. Furthermore, he explained, long before he wrote his 'who doubts', he had learned that Donatists forced to abandon their sects and to embrace Catholic Christianity grew grateful for the threats, punishments, and 'pain' prompting them. What the Carthaginian playwright Terence noticed and stipulated more than five hundred years before still applied: parents were most gratified whenever they could discipline their children tenderly, shaming them to restrain them. Augustine agreed but also observed that discipline most often required punishments and fear of punishment (epistle 185.21).<sup>10</sup>

God planned wisely when welcoming emperors and magistrates into the faith. They became disciplinarians supplementing what the church's authorities did to ensure conformity and obedience. Public officials were converted to Catholic Christianity in Africa to protect it, drawing secessionists to colleagues who consistently acknowledged the political regime's function and who set forth generous conditions for the dissidents' reconciliation. Augustine never tired of recalling that Donatists were the

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<sup>10</sup> *'Melius essa quidem quis dubitaverit ad Deum colendum doctrina homines duci quam poena timore vel dolore compelli'*? For Theodosius' regulations, consult Bond (2014). Augustine, *Contra litteras Petilianus* 2.97, 224 compares the verdicts rendered and edicts issued when Constantine, the first faithful emperor, judged in favor of Catholic Christianity with the decrees restoring basilicas to the Donatists issued by the apostate emperor Julian. In this connection, see Szidat (1990).

first to appeal to the government--to Constantine--formulating their case against Caecilian before the Caecilianists' overtures were even contemplated. Donatists only soured on magistrates' interference when they lost influence with magistrates in Africa, having lost influence with Emperors Theodosius I and his son Honorius, who ruled in the West from Rome and Ravenna from the 390s to 423. Moderate Donatist Bishop Emeritus complained at the Council of Carthage in 411 about the partnership between African Catholic Christian bishops and government officials. What Augustine called discipline, Donatists experienced as unjust punishment and abuse. But Augustine had convinced officials that moderates and extremists among the sectarians were shameless, stubborn, and arrogant. If left unpunished, their sense of superiority to other African Christians could lead to a politically subversive stand against magistrates faithful to the churches from which the sectarians seceded and faithful to the emperors whose interest in the controversy the sectarians derided.<sup>11</sup>

The more that Donatists' stubbornness seemed impenetrable, to Augustine, the more it seemed subversive. Who could tell whether (or when) accusations hurled against a regime that confiscated their basilicas and exiled their prelates would turn moderates into extremists--and turn both, as it had turned Optatus of Thamugadi, into insurgents (epistle 87.7)? The dissidents were 'terribly agitated', Augustine said, insinuating that the fear of punishment could distract them and deter reckless action against the government. The Donatist secessionists, he continued in a letter justifying magistrates' intervention, would be grateful for having had their anxieties quieted once they experienced paternal punishments that drew them to Catholic Christianity (epistle 93.1). The truths of the sacred texts would grip them, if only they were obliged to look beyond Donatist exegesis.

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<sup>11</sup> Augustine, epistle 105.7-9; Augustine, *Contra epistolam Parmeniani* 2.7, 13; and Kaufman (2009, 132-33). See Lancel (1975, 3: 1226) for Emeritus' dissent, citing, *inter alia*, the Gospel of John (15: 18-19), the passage in which Jesus explained to his disciples that they were not "of the world," which "despised" them (*de mundo non estis . . . propterea odit vos mundus*). Hugoniot (2002, 2084) suspects that a number of municipal officials in Hippo may have been Donatists during Augustine's pontificate.

Augustine seemed fond of retelling the story from the Gospel of John of the persecutors at the Cross who decided to cast lots for--rather than to divide--Jesus' seamless tunic. He compared them to sectarians who divided the church and perpetuated the schism.<sup>12</sup> Donatists had a response at the ready, contrasting Jesus' restraint with Catholic Christians' apparent rush to punish. Jesus censured the Apostle Peter for having attacked one of the intruders who had come to apprehend him. Augustine answered by reversing roles. Donatists were not to be paired with the victim of Peter's assault but with the villains in that episode, with the armed men sent to take Jesus into custody. The secessionist extremists, especially their accomplices among circumcellions, ordinarily were armed, as were Peter's and Jesus' enemies. The Donatist moderates, moreover, claimed exclusive custody of the grace that initiated and absolved--grace that Jesus left to and for a unified, compassionate church. Finally, distinguishing between punishments intended to harm and punitive measures implemented to help, Augustine argued that the Donatists whom magistrates punished ought not to be coupled with persecuted apostles and their murdered messiah. Those who persecuted the first Christians, others who made martyrs of their heirs, and the depraved, drunken, vicious circumcellions who assaulted Africa's Catholic Christians were out to harm their victims. Authorities in the late fourth and early fifth centuries disciplined Donatists to help them.<sup>13</sup>

And to help the Catholic Christians' churches! For the schism was not irreparable. Sectarian African 'branches' of the universal church were not forever lost; they might be grafted back onto its African limb. Augustine borrowed the Apostle Paul's prophesy (Romans 11: 19-21) that the Jews would be grafted into the church to reassure his parishioners (and probably local magistrates) that--once their regime's threats, fines, seizures, and incarcerations drew penitent dissidents into the Catholic Christian church--God would be pleased, as would they, for the attention they received (sermon 162[A].9).

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<sup>12</sup> *In Evangelium Joannis tractatus* 13.13, referring to John 19:23-24.

<sup>13</sup> *Contra litteras Petiliani* 2.89, 194-95, referring to John 18: 10-11; epistle 93.8.

In the early fifth century, Augustine and his colleague Alypius, bishop of Thagaste, wrote to two brothers in Bagai. The first, Maximian, a Donatist bishop, relinquished his see rather than cause conflict in the city. The second, Castorius, a Catholic Christian, was urged to take his brother's place, but before trumpeting the virtues of their candidate, Augustine and Alypius praised Maximian's piety and passion for peace. His resignation, they wrote, attested his estrangement from the 'mad, maddening pride' of other incorrigibly sectarian Donatists. His selfless commitment to the unity of the church in Bagai made it easy for Augustine and Alypius to forgive him, to practice what they preached--that those who forgive are forgiven (sermon 181.8; epistle 69.1-2)--even as they advocated punishment. Augustine knew that--and why--Christians preferred to think about mercy rather than divine wrath or rage. Who would want to contemplate how badly life after death could go wrong for them? Better to rely on God's tenderness than to contemplate terrible torments (*Enchiridion de fide, spe, et caritate* 112). Augustine's *City of God* explicitly concedes that the fate of the faith relied, to a great extent, on fears that punishment awaited those who denied or betrayed it, as its sacred literature forecast. Likewise, the solidarity of Catholic Christianity in Africa seemed to Augustine to rely on threats of force in this world and the fear of fire in the next to awaken secessionists to the seriousness of their offenses against the peace and unity of the African church. The tender-hearted favored frequent clemency. They yearned to spare sinners eternal punishment, but Augustine knew, as they apparently did not, that thereby they jeopardized the faith.<sup>14</sup>

Disciplining the Donatists was God's work. Augustine would have readily admitted that his knowledge of the connections between punishing secessionists and strengthening the church had nothing to do with the strategy or success of both endeavors. Nor had colleagues' trickery or bribery played into the punitive measures magistrates judged necessary. But Donatists were known to deceive,

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<sup>14</sup> *De civitate Dei* 21.23 ('*enervabitur fides*'), discussing the condemnation of the Devil in the Gospel of Matthew 25: 41-46.

Augustine confided, recycling one report that they pretended to be Catholic Christians to retrieve a few basilicas from rival dissidents, Maximianists. (Augustine intimated that the proconsul presiding colluded for cash or was simply inattentive [*Enarrationes in Psalmos* 57.15]). God apparently let that matter pass yet saw what Augustine came to see, specifically, that ‘medicine that molests’ or terrifies patients with laws and penalties would be required if intransigent Donatists were to be reconciled with the church decreed legitimate by the regime (epistle 185.26).

In a letter to a less corrupt and less capricious proconsul than the one who returned churches to the Donatists, Augustine countenanced setting limits to punishment. Proconsul Apringius was preparing to pronounce sentence on Donatists who had murdered one and mutilated another Catholic Christian in 411. The culprits confessed. Theirs was a capital crime; Apringius’ brother Marcellinus presided over the Council that reiterated the proscription of Donatism that very year. But Augustine asked that Apringius forego the death penalty. He argued that the blood of their assailants would somehow stain the victims’ sacrifice. Catholic Christians, in general, he said, displayed fortitude in the face of Donatist enemies. To shed the blood of the latter--to return harm for harm, evil for evil--was unworthy of the faith. Augustine carried his point to an apparent extreme, stipulating that the perpetrators should go free, if alternatives to the scaffold were wanting. Lethal reprisals, he continued, were unworthy of his faith. He urged that Apringius consider and condone more humane punishments. Sparing the perpetrators, moreover, gave Catholic Christians an opportunity to reform them. ‘As you allow the enemies of the church to live, you provide a stretch of time for them to repent’ (epistle 134.3-4).<sup>15</sup> Augustine’s position, here and--we will see--elsewhere, was inconsistent with the effects he expected from inspiring among secessionists a fear of punishment, yet it corresponded perfectly with his explanation of how one can strike at the sins yet save the sinners. It also corresponded with what he took to be God’s practice. For God seldom punished

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<sup>15</sup> *‘tu inimicis Ecclesiae viventibus relaxa spatium poenitendi’.*

promptly when creatures strayed; rather, the strays were given time to repent (*Contra Julianum opus imperfectum* 5.64, 1; sermon 13.8).

Writing to Apringius' brother, the tribune Marcellinus, Augustine patched other considerations into his case for clemency and let them eclipse the question of offenders' repentance and rehabilitation. He accepted the possibility that clemency could be construed as weakness or negligence, yet he trusted that the gain would outweigh any loss of credibility. For lenient verdicts that spared misguided perpetrators of the most abominable outrages against Catholic Christian churches and personnel threw into greater relief the kindness and compassion of the victimized Catholic Christian communions willing to forego vengeance and reconcile with their enemies (epistle 139.2). A few years later Augustine wrote Macedonius, Vicar of Africa, addressing another likely reservation magistrates must have articulated. He granted that unforeseeable consequences of amnesties and leniency might tell against the reprieves he commended, inasmuch as some recidivism could be expected. Sparing sinners might not save them. Successful reintegration in society was not guaranteed. Nonetheless, Augustine held that the possibility of good results should be uppermost in magistrates' minds. He hoped they would be receptive to their pastors' and bishops' counsel and that they would, selectively, punish lightly to confirm the high moral standards of the Catholic Christian faith, its superiority to Donatist extremists and moderates, and the wisdom of pronouncing punishments (or pardons) that permit rebellious sectarians' reconciliation (epistle 153.18).

Augustine considered that the principal work of reconciling Donatist secessionists to Catholic Christianity was pastoral. Punitive measures and their fear of punishment pried them from their sects and undermined their eccentric, unwarranted sense of superiority, although punishments served the purposes of their polemicists who paired the punished with the martyrs they venerated. Augustine and his Catholic Christian colleagues, had a rejoinder. They asserted that punishment disgraced rather than

dignified dissidents, who should not have been regarded as virtuous because the government fined or exiled them. Their punishments and persistence only signaled their stubbornness and arrogance. The *City of God* put Augustine's counter succinctly and soterially: 'we remain under God's pardon'; hence, 'whatever insignificant virtue [creatures] called their own' derived from the humility, which came to them with God's grace (*De civitate Dei* 10.22).<sup>16</sup>

Augustine's sermons urged the faithful to live well so their behavior would attract others to their faith. Sins damaged the faith's and the faithful's reputations, yet sinning was habitual, unavoidable. To keep it from subverting piety, Catholic Christians must fast, pray, and be charitable every day. Highly placed prelates were no exceptions. They too must be vigilant, unsparingly self-critical, penitent, and selflessly compassionate. The Donatists, he complained failed at all that. They rated themselves and especially their bishops well above the ordinary run of sinners, and they ranked Donatus above Jesus (Dolbeau, 1996, sermon 26.45, 52, and 56). So said Augustine, but complaints of that sort now seem suspicious. But what matters is that Augustine believed that impieties of that magnitude took place in every dissident congregation when its bishop rebaptized Catholic Christians, claiming that Caecilian's sin contaminated the church officials presiding over first baptisms. The Donatist priests or bishops presiding over the second purported to be undefiled. In effect and unlike the apostles, they usurped Jesus' role as mediator (Dodaro, 2004, 96-99). Their pretensions to purity exhibited their lack of humility, which was assumed to arrive in the faithful with God's grace. Augustine told parishioners that he was outraged at holier-than-thou Donatist prelates who read the psalms yet denied their rivals in Africa were part of a more universal or Catholic Christian communion that better represented the church that the psalmist had promised the faithful, a church *permixta*, with some not yet strenuously struggling for virtue and

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<sup>16</sup> *'ipse quantulacumque virtus quae dicitur nostra, illius est nobis bonitate concessa. . . . sub venia viveremus'*.

others close to victory, a church spread to the ends of the earth. No wonder Augustine sanctioned the government's punitive measures (*Enarrationes in Psalmos* 21[2].29).

Had he not been distressed by his disappointments at having failed to persuade secessionists with arguments, Augustine might have been more reluctant to condone coercion. Yet his overtures to them had obviously failed to reunify the church. Extremists among them and circumcellions terrorized society. Punitive measures seemed necessary and appropriate. But if Augustine's had been more than a grudging concession to necessity, one would expect him to have embraced the government's provisions for the church's courts. His lively participation as arbiter and magistrate in what were known as bishops' 'audiences'--together with his enthusiasm for the government's punitive posture towards and measures against Donatists--conceivably could forge that 'essential continuity' between the church and 'state' that Burnell (2005) believes he sees. To be sure, emperors after Constantine 'scaled back' the jurisdiction of bishops' courts (Lamoreaux, 1995), but during Augustine's pontificate, the courts still gave prelates the chance to take matters on the frontier between regime and religion into their hands. The faithful could avoid prejudices harbored by pagan magistrates as well as what A.H.M. Jones (1964 1:517) calls the 'excessively slow' delivery of verdicts for which the government bureaucracy became known. Jones surmises that 'the humblest citizens' could count on a 'rough-and-ready, cheaper, speedier justice . . . before the local bishop'.<sup>17</sup> Clara Gebbia (1988, 693-94) adds that the regime's courts in Africa were not just slow but usually shockingly ineffective (*'impotente'*). Augustine was scrupulous. He seemed intent on avoiding the appearance of impropriety, when he summoned several distinguished local laymen to help referee a case in his audience involving an argument about a legacy willed to the church. At least, he looks to have been attempting to ensure that the grievances of the estates' other heirs would get a fair hearing (sermon 355.3). He was conscientious, yet he never warmed to his role as magistrate. He

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<sup>17</sup> For legislation creating the church's courts, see Cimma (1989) and Drake (2000, 323-29).

handed over his court duties years before he died, letting his lieutenant preside from 426 (epistle 213.5). And Augustine never seems to have sought to integrate or identify his court or the church's courts with the government's initiatives.<sup>18</sup>

A few of his remarks show how uncomfortable he was sitting in judgment and trying to make peace between self-righteous and aggressively selfish litigants. His temperament was better suited to fathoming mysteries than to playing magistrate. Besides, as he confided, preaching on the psalms, his work as a magistrate cramped his effectiveness as a pastor. He began one sermon advising parishioners who behaved at times as if they were the only upright persons in the congregation or in the courtroom. Augustine explained to them that churches were threshing floors with both wheat and chaff (*permixta*, once again). The good and wicked worshipped together. But the good who were uncharitable and quick to assume that fellow parishioners' causes were unjust were no longer as good or upstanding as they thought (*Enarrationes in Psalmos* 25[2].5). Before he concluded his sermon, however, he returned to problems that intolerance and contention created in churches and in church courts, explicitly alleging that litigants' recriminations impaired his pastoral care, for them and for others. His tone suggests that there was nothing he loathed more than adjudicating cases, disappointing parishioners whose anger at the outcome placed them beyond his influence. Losers accused him of accepting bribes from winners. Augustine wanted both to be fair and to reconcile the quarrelsome, yet, as magistrate, he forfeited a place in parishioners' affections, which he had tried to preserve by the impartiality he showed in his audience (*Enarrationes in Psalmos* 25[2].13; *Enarrationes in Psalmos* 118[24].3). He recalled that the Apostle Paul counselled Christians not to bring their quarrels before secular judges. The apostle was unequivocal but also itinerant; he never settled anywhere long enough to play magistrate and realize

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<sup>18</sup> For Augustine's presumed effort to expand his audience's jurisdiction and influence secular jurisprudence, compare Raikas (1997) with Kaufman (2003). Also consult Uhalde (2007, 66-67, 135-37).

how difficult it might become to reconcile belligerent litigants. He would not have foreseen the pastoral predicaments bishops' judicial determinations might leave in their wake. And he would never know the incessant demands contention in church courts would make on prelates' patience and time (*De opera monachorum* 37; epistle 48.1).

Despite his complaints, however, one of Augustine's letters suggests to some scholars that he relished opportunities to reconcile querulous Christians in court. He wrote Eustochius, a Christian who must have been learned in the law, because Augustine inquired in detail about the rights of parents, tenants, and landlords with respect to the status of slaves (epistle 24\*). Elsewhere he expressed his opposition to slave traffickers, but the letter to Eustochius addressed less sinister specifics than the kidnapping that filled slavers' ships and coffers. Augustine's letter, that is, was no strategically crafted prelude to a campaign for emancipation. Perhaps it probed to ensure that he justly reprimanded and punished those who illicitly enslaved tenants or offspring illicitly. But Eustochius could well have been asked for information to relieve the anxieties that attended Augustine's pastoral counseling when he repeated the sacred texts' directive that slaves among the faithful obey their masters. Augustine may have been seeking legal advice to avoid counseling submission to those wrongfully enslaved. He asked, for example, whether slaves were still slaves when parents who farmed them out died. Did that death render them 'independent' and free to sell their labor? Surely, had Augustine been enthusiastic about the role of the bishops' courts to prescribe punishments for the exploitation of forced labor, he would have explored the possibility of challenging current custom. Instead, he sought information about prevailing practices. Eustochius' response has not survived; in its absence, evidence of Augustine's research for his supposed judicial activism remains inconclusive.<sup>19</sup>

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<sup>19</sup> Lepelley (1983) knits Augustine's specific questions for Eustochius into a case that conceivably was pending in the bishop's court.

And when he wrote about slave trafficking, rancorously and at length, he made a point of leaving punishment to government authorities. The letter was sent to Alypius who was then (in the 420s) in Italy. Augustine was baffled and scandalized by the freedom with which Galatian slave traders raided Numidia '*maxime*', but other African provinces as well, and used the port of Hippo to assemble and deport their catch. His church managed to ransom a few captives, yet the problem required more comprehensive remedies. He urged Alypius to ask officials at Court to instruct their representatives in Africa to implement measures to check slavers' foraging but did not mention the bishops' courts at all (epistle 10\*.5-7).

Augustine only infrequently lectured the regime's magistrates in Africa on the connections between punishment, rehabilitation, and reconciliation. He reserved his church a critical role in the latter two but did not think his court or audience could make significant contributions. The regime's contribution was protection. As Charles Mathewes suggests, Augustine would have conceded that 'no realistic political psychology can do without' fears that the prospects for punishment prompted (2010, 49-51). Still, one can readily imagine Augustine acknowledging as well that the power to punish was not just an indispensable attribute of political authority but was also one of several symptoms of the 'lust to dominate', which characterized or afflicted all authorities 'in this wicked world'--and which revolted him (*De civitate Dei* 3.14 and 18.49).

Augustine relished time for contemplation and learned conversation. Still, he acquiesced to being ordained in the early 390s and to serving the laity while trying to live honorably (*Contra Faustum Manichaeum* 22.56).<sup>20</sup> That service committed him to proposing, defending, and mitigating punishments aimed to resolving his parishioners' problems and ending battles between them. But the battles directly

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<sup>20</sup> '*honeste ambulans ad eos qui foris sunt*'.

related to a more profound reconciliation were those raging within his parishioners. Creatures were not equipped to prevail over their envy and desires to acquire. From Augustine's perspective, philosophies had little to contribute to that end. They commended self-control or at least the appearance of control, but they underestimated the extent to which temptations overtaxed efforts to restrain 'the flesh'. Professing self-control, moreover, was tantamount to arrogant self-assertion, which turned attempts to cope with disgraceful desires into interminable, unwinnable struggles. Pastors began with parishioners' sense that they were losing--and that punishments they would face were far worse than a government could have prescribed--and preached a repentance and reconciliation that replaced the fear of punishment with a love of righteousness.<sup>21</sup> Such reconciliation would have had some influence on Christians' conduct in civil society; the faithful, ideally, were more compassionate, better prepared to yield to magistrates' determinations. Yet, one imagines that, if Augustine had his way, yielding would have preceded litigation. He would have had the faithful let injudicious remarks that normally prompted libel suits and inextinguishable animosities go unremarked. His pastoral duty was to persuade parishioners that the celestial peace their faith, composure, and love for God and neighbor would purchase was far more valuable than avenging insults or securing revenues and temporal rights.

Persuading magistrates to release the convicted and condemned, bishops might blunder. Beneficiaries of their interventions could disappoint. One reprieved malefactor might murder many innocents. Even the most vigilant prelates, as pastors, could not infallibly oversee and guarantee every rehabilitation. The best they could do was set examples of forgiveness and make their faith compelling in a world dominated by self-love and retributive justice. Their objective was to make an other-than-terrestrial reconciliation the aim of every reprimand (epistle 153.18).

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<sup>21</sup> For example, see sermon 154(A).1-3. Also consult Nisula (2012, 264-65).

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