

AUGUSTINE ON JUSTICE: THEORY AND PRAXIS.

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Abstract

Augustine of Hippo can be cited among the major exponents of Christian philosophy and theology who, in the late antiquity, meaningfully contributed to the affirmation of Christian thought in the midst of the contrasting schools of thought through which clearly sounded the death knell of the authority of the pagan thinkers as guides. In this paper the author has examined Justice in Augustine from the theoretical and practical points of view. For this reason, he carried out an overview of the theory of Justice diffused in the various works of the Bishop of Hippo, without any pretension to give an exhaustive account considering the very limited space we have in this avenue. Then, he considered the praxis of Justice by Bishop Augustine in his diocese at the service of the people of God and in relation with civil authorities.

Keywords: Augustine, Justice, Theory, Praxis.

Introduction

Justice is one of the major issues which have always occupied the thought of thinkers, and nourished the desire of individuals and of all peoples in society down through the ages. Philosophers of the olden days defined it and theorised on it, lawyers defended it and lived on it, judges applied or obfuscated it, the poor sought after it, the oppressed cried for it and rulers promoted or ignored it. The situation about this virtue seems not to have changed even in our own days. However, there seems to be an ambiguity about the notion of Justice. Some seem to think that justice is the ground-floor of the edifice of virtues, with charity on the upper storey. Others believe that when justice prevails universally there will be no room for charity²³⁵, and there are many more variegated views. But since the social order is impossible without justice, any ambiguity surrounding this virtue interferes not only with truth with which philosophers are formally concerned, but also with that universal concern - peace, which follows only upon

²³⁵ Cf. M. T. Clark, *Augustine on Justice*, in *Revue des Etudes Augustiniennes (REAug.)* IX (1963), 87.

the order established by justice not in terms of mere philosophical speculations and theories but in concrete and tangible life events through the guidance and illumination of God.

In reference to the irreplaceable role of God in every human good attainment, Christian Apologists of the 2nd century A.D, who were formed in the context of the decadence of the philosophical inquiry into truth, came to the idea that the "*dissensiones philosophorum*"²³⁶ demonstrate that human reason cannot grasp truth unless it is aided by divine intervention. Men will surely theorise and speculate on what Justice is and how best it could function in society, but if they will not acknowledge God as its guarantor, it will only be a vice. For example, while admitting that the philosophers of his time and those who preceded them, who were indeed searchers of true wisdom, had tried in the proper way to be worthy of the renunciation of the pleasures and the practice of virtue, Lactantius also warned in his *Divinae Institutiones* that these meritorious labours had brought them only to wander, contradicting themselves in error and imprecision because they had not been able to recognize that human reason is not commensurate to the nature of divine truth: "*It was not possible that the higher and divine rationality of the true (divina ratio) could be manifested to man as such*"²³⁷. Consequently, reason itself should recognize that only Christians, with their dispassionate adherence to a truth guaranteed as such by its divine origin, were placed in a position, thanks to a gratuitous act of God, to know something of the divine truth which cannot be contradicted. On the basis of this view, from the era of the Emperor Constantine on, Christian intellectuals became aware of the fact that being in possession of revealed truths about the origin and ultimate ends of the world and humanity imposed on them the duty to replace the ancient pagan philosophers as educators and moral guides of the people of God²³⁸.

Augustine of Hippo can be cited among the major exponents of Christian philosophy and theology who, in the late antiquity, meaningfully contributed to the affirmation of Christian thought in the midst of the contrasting schools of thought through which clearly sounded the death knell of the authority of the pagan thinkers as guides. Retracing the process of his personal conversions, Augustine openly criticised the sceptics in his *Contra Academicos* and the

²³⁶ This expression could be translated as disagreements of (or among) philosophers. It expresses the failure of classical philosophy which led thinkers of late Antiquity like Cicero to opt for a kind of scepticism. One the best and most recent studies on that aspect of late antiquity is that of G. D'Onofrio, *Vera philosophia Studies in Late Antique medieval and Renaissance Christian Thought*, Turnhout, Brepols, 2008, 31-35.

²³⁷ Lactantius, *Divinae Institutiones*, I, 1, 1- 5 (PL 6, 111A-113A) especially, 5, 113A : "Quia veritas, id est arcanum summi Dei, qui fecit omnia, ingenio ac propriis sensibus non potest comprehendendi".

²³⁸ Cf. G. D'Onofrio (ed), *Storia della Teologia nel Medioevo I. I principi*, Piemme, Casale Monferato 1996, 9.

Manicheans for their false realism in his *De moribus ecclesiae catholicae*. In the *De vera religione* written the year before his priestly ordination, Augustine directly criticised classical philosophy as such, and affirmed the new Christian philosophy. In this very important work of his, Augustine repeats his denunciation of the proliferation of various sects of ancient philosophies to reiterate and consolidate the unity of Christian school and thus assure the absolute and reciprocal identity between philosophy and religion²³⁹. However, in many aspects of this literary endeavour, Augustine made use of his classical Greco-Roman formation background to expose the Christian doctrine in a reasonable way to the people of his time. While acknowledging what in pagan philosophers does not contradict the Gospel, Augustine accurately elaborated his thought grounding it firmly on the Authority of Christ and his Gospel (*Auctoritas*) and on Reason (*Ratio*). Given that this epistemological method²⁴⁰ pervades all the works of Augustine, we need not insist that his idea on the question of Justice is also guided by the same principle. In this paper we intend to examine Justice in Augustine from the theoretical and practical points of view. For this reason, we shall carry out an overview of the theory of Justice diffused in the various works of the Bishop of Hippo, without any pretension to give an exhaustive account considering the very limited space we have in this avenue. Then, we shall consider the praxis of Justice by Bishop Augustine in his diocese at the service of the people of God and in relation with civil authorities.

I. A theory of Justice

I.1. Augustine's initial reflection on Law and Justice²⁴¹

The Augustinian notion of Law and Justice, in the early stage of his thought includes what was common among the authorities in classical education. For example like Cicero, Augustine distinguished the *lex aeterna* (eternal law) from the *lex naturalis* (natural law) and the *lex temporalis* (temporal law). But for him, the *lex aeterna* was the will and wisdom of a personal Creator, the eternal reason

²³⁹ Cf. Aug., *De vera religione*, 5, 8, (PL 34, 126) : “Sic enim creditur et docetur, quod est humanae salutis caput, non aliam esse philosophiam, id est sapientiae studium, et aliam religionem, cum ii quorum doctrinam non approbamus, nec Sacra menta nobiscum communicant”.

²⁴⁰ Cf. N. Cipriani, *I dialoghi di Agostino*, Studia Ephemeridis Augustinianum 134, IPA Roma 2013, 45-64.

²⁴¹ In our attempt to elaborate Augustine's understanding of Law and Justice, we depend on experts in this field of inquiry, majorly Eva-Maria Kuhn's well-researched article *Justice Applied by the Episcopal Arbitrator: Augustine and the Implementation of Divine Justice*, in *Etica & Politica / Ethics & Politics*, IX, (2007), 2, 71-104, various works by Fr. Robert Dodaro including his articles *Justice*, in A.D. Fitzgerald (ed.), *Augustine through the Ages. An Encyclopedia*, Eerdmans, Grand Rapids (Michigan) - Cambridge 1999, *Iustitia/Iustus (Iusti)*, in *Augustinus Lexikon* Vol. 3, 866-882, *Augustine on the Statesman and the Two Cities*, in Mark Vassey (ed.), *A companion to Augustine*, Wiley-Blackwell, London 2013, 387 and his monograph *Christ and the Just Society in the Thought of Augustine*, Cambridge University Press, Cambridge 2004.

and will of God²⁴². In this approach we clearly see the opposition of Augustine to pagan thought. The personal God commanded the observance of the natural order of things and forbade the disturbance of it²⁴³. The content of the *lex aeterna* was to preserve the order of creation; this was the object of their *incommutabiles regulae*. In God's creation, in this *ordo naturalis*, everything had its due order and as a reflection of the divine, the *lex naturalis* or *lex intima* was the imprint of the *lex aeterna* on the human soul: "therefore, to explain briefly how I value the notion which is impressed on us by eternal law, it is the law by which it is just that everything should have its due order"²⁴⁴ says Saint Augustine. For him, in order to understand the *lex aeterna* and to grasp truly what was just and what was not, all human beings depended on God's grace²⁴⁵. The bewildering discontinuity of human action and circumstance was the result of weakness and ignorance (*infirmitas et ignorantia*); time and time again they were getting in the way and stood in contrast to the invincible purpose of an omnipotent God²⁴⁶. This resulted in the paradox of the need for God's privilege of grace on the one hand and free will on the other. But a reconciling view could be found already in the New Testament. In the Gospel according to John, Christ was identified with the *Logos*, a term that conveyed multiple traditions and encouraged diverse images and could be understood as "*word*" of the Jewish God become fact, but also echoed the cosmic law of classical philosophy²⁴⁷. For Augustine in like fashion, human weakness and ignorance could be overcome by Christ, who was the incarnate solution to human need for God's direct mediation²⁴⁸. Through Christ man can decipher the truth inscribed in his soul, a revelation that

²⁴² E.-M. Kuhn, *Justice Applied*, 74.

²⁴³ Cf. Aug. C. Faust. XXII, 27 (CSEL 25/1, 621): *Lex aeterna est ratio divina vel voluntas Dei, ordinem naturalem conservari iubens, perturbari vetans*. And A.-H. Chroust, The Philosophy of Law of St. Augustine, «The Philosophical Review», 53 (1944), 196.

²⁴⁴ Aug., *Div. qu.* 53, 2 (CCL 44A, 88): *Transcripta est naturalis lex in animam rationalem*; Lib. arb. I, 6, 15 (CSEL 74, 15f.): *...ut igitur breviter aeternae legis notionem, quae impressa nobis est, quantum valeo, verbis explicem, ea est, qua iustum est, ut omnia sint ordinatissima*.

²⁴⁵ Cf. Aug., *Nat. et gr.* 19 (CSEL 60, 245): *Aliud intellegere velle nec posse et facere contra legem non intelligendo quid fieri velit*; H. Welzel, *Naturrecht und materiale Gerechtigkeit. Prolegomena zu einer Rechtsphilosophie*, Vandenhoeck & Ruprecht, Göttingen 1951, 53f.

²⁴⁶ Cf. P. Brown, *St. Augustine's Attitude to Religious Coercion*, in *Journal of Roman Studies*, 54 (1964), 111.

²⁴⁷ Jn. 1, 1-18 (prologue): "In the beginning was the Word and the Word was with God and the Word was fully God ... and the Word became flesh...". The Creator of the book Genesis is evoked here, of course, but also the Divine Wisdom of e.g. Proverbs 8, 22-31, already a similar conception to the universal principle of Greek thought. Justin's interpretation for instance was influenced by Stoicism, when he presented Christ as the *logos spermatikos* who 'inhabits everybody' (cf. *Apol. App.* 10, 8). On the adaptability of the word *logos* and the understanding of the Johannine Gospel there is much and also much biased controversy. I found E.L. Miller, *The Johannine Origins of the Johannine Logos*, in *Journal of biblical Literature*, 112 (1993), 445-457 quite useful, or: H.P. Thyssen, *Philosophical Christology in the New Testament*, in *Numen*, 53 (2006), 133-176. In patristic thought also Rom 2,14ff, and Mt 7, 12 would often be quoted: the divine order is there all along, but Jesus Christ brings new perception of it.

²⁴⁸ Cf. Dodaro, *Christ and the Just Society in the Thought of Augustine*, Cambridge University Press, Cambridge 2004, 70f. Augustine's model for Christ as the instructor is again Cicero's *vir optimus*.

Augustine experienced himself reading the Holy Scripture in a garden one day²⁴⁹.

The correlation of divine law and justice with the *lex naturalis* again meant the theoretical rejection of any value in themselves of the rules of the *lex humana*, the *leges temporales*. Laws and rules of the world were only binding if they were in accordance with divine law. The *lex temporalis* was forever changeable. It was positive law that had to be adjusted to time and place. It was only binding and just, were it drawn from the eternal law of God, which never changed: "I think you can also see that in the temporal law nothing is just and lawful that men do not derive from eternal law"²⁵⁰, Augustine explained, and he would go further and hold that *non est autem ius ubi nulla est iustitia*²⁵¹ – "but there is no law, where there is no justice". A temporal law that was not just was not a law and did not cause obligation, "for, if the emperors were in error – God forbid! – they would issue laws in favour of their error against the truth, and by those laws the good would be tested and receive crowns as their reward for not doing what the emperors commanded, because God forbade it"²⁵². But does this mean that Augustine negates the value of temporal laws?

First of all at a general level, Augustine certainly believes that all political regimes are depraved, though he admits that some are less depraved than others and that some are less depraved at certain times in their history than at other

²⁴⁹ Here we are making reference to the episode narrated by Augustine in his *Confessions* about his conversion. Most especially his famous prayer in *Confessions* X, 27, 38, (CSEL 33, 255): *Sero te amavi, pulchritudo tam antiqua et tam nova, sero te amavi! Et ecce intus eras et ego foris et ibi te querebam et in ista formosa, quae fecisti, deformis inruebam. mecum eras, et tecum non eram. ea me tenebant longe a te, quae si in te non essent, non essent. vocasti et clamasti et rupisti surditatem meam, coruscasti, splenduisti et fugasti caecitatem meam, fragasti, et duxi spiritum et anhelo tibi, gustavi et esurio et sitio, tetigisti me, et exarsi in pacem tuam.* ("Late have I loved you, Beauty so ancient and so new, late have I loved You! Lo, you were within, but I outside, seeking there for you, and upon the shapely things you have made I rushed headlong, I misshapen. You were with me but I was not with you. They held me back from you, those things which would have no being were they not in you. You called shouted, broke through my deafness; you flared, blazed, banished my blindness; you lavished your fragrance, I gasped, now I pant for you; I tasted you, and I hunger and thirst; you touched me, and I burned for your peace".) Translation by Maria Boulding, O.S.B. in Rotelle, J., E., O.S.A. (ed.), *The Works of Saint Augustine. A translation for the 21st Century. The Confessions I/1, 2 9th edition*, Hyde Park N.Y: New City Press, 2008).

²⁵⁰ Aug., *Lib. arb.* I, 6, 15 (CSEL 74, 15f.): "*Simul etiam te videre arbitror in illa temporalis nihil esse iustum atque legitimum quod non ex hac aeterna sibi homines derivaverint*". The translations throughout the article strongly bear on the translations given in The works of Saint Augustine. A Translation for the 21st Century, New City Press, New York.

²⁵¹ Aug. *Civ.* XIX, 21 (CSEL 40/2, 408). With his opposition to the Pelagian model of 'self-perfection' (*emancipatus a deo*, C. Iul. imp. I, 78, Augustine also replaced Cicero's concept of *ius* with the concept of *vera iustitia*.

²⁵² Aug. *Ep.* 105, 2, 7, written after the year 406 (CSEL 34/1, 599): *Imperatores enim si in errore essent, quod absit, pro errore suo contra veritatem leges darent, per quas iusti et probarentur et coronarentur non faciendo, quod illi iuberent, quia deus prohiberet; Cresc.* III, 51, 56 (CSEL 52, 462): *Reges cum in errore sunt, pro ipso errore leges contra veritatem ferunt; cum in veritate sunt, similiter contra errorem pro ipsa veritate decernerunt: ita legibus malis probantur boni et legibus bonis emendantur mali.* In *Lib. arb.* I, 5, 11, (CSEL 74, 12) he was explicit: *Nam mihi lex esse non videtur, quae iusta non fuerit* ("so an unjust law does not seem to me to be a law") And in *Civ.* IV, 4 Augustine would reference Cicero's *De legibus* I, 16, 43: *remota iustitia, quid sunt regna nisi magna latrocinia?*

times²⁵³. But it is good to acknowledge with Clarke that far more than he is generally credited with, Augustine appreciated the necessary role of government in the making of peace within human and among humans. Far too often his name for sovereignty as “organized brigandage”²⁵⁴ is referred to in isolation from the context wherein he shows the contribution to the common good that can be made - not by rulers who are Christian, but by Christian rulers who are just²⁵⁵. Augustine did revive Cicero’s view that temporal laws depended for their value on the eternal law, but he was aware of the need for implementation of temporal rules and regulations. The dynamic of change required Augustine’s lawmaker to know when a just law had to be modified to bring about a sound reflection of the eternal, unchangeable principles. Augustine derived the need for rule and order from the necessity of a restoring order and peace. Since Adam’s fall, humanity could live peacefully together only under the authority of rules accompanied by sanctions. Mankind achieved justice in a peaceful society when there were laws made by humans for their fellow human beings²⁵⁶, where justice was “the virtue that assigns to every man his due”²⁵⁷. So for Augustine, the very fact of living in society demands that there should be guiding principles and regulations to govern the course of events among members. He makes recourse to the all-present classical view of justice to that effect but he would also introduce the distinctive mark of his Christian faith. This is what many scholars fail to acknowledge and so many end-up accusing Augustine of Manichaeism, or as a thinker who merely baptised ancient pagan thoughts as the title of an important book by a renowned professor suggests²⁵⁸.

²⁵³ Cf. R. Dodaro, *Augustine on the Statesman and the Two Cities*, in Mark Vassey, *A companion to Augustine*, Wiley-Blackwell, London 2013, 387.

²⁵⁴ Cf. Aug. *ciu. dei*. IV, 4.

²⁵⁵ Cf. M. T. Clarke, *Augustine on Justice*, 91.

²⁵⁶ Cf. *Ibid.*, XIX, 6 (CSEL 40/2, 381): “*Quid ipsa iudicia hominum de hominibus, quae civitatibus in quantalibet pace manentibus deesse non possunt, qualia putamus esse, quam misera, quam dolenda? Quando quidem hi iudicant qui conscientias eorum, de quibus iudicant, cernere nequeunt?*” (“What of those judgements pronounced by men on their fellow men, which are indispensable in cities however deep the peace that reigns in them? How sad, how lamentable we find them, since those who pronounce them cannot look into the consciences of those whom they judge.” Transl. by W.C. Greene, The Loeb Classical Library, vol. VI, 143).

²⁵⁷ Cf. Aug. *ciu. dei*. XIX, 21 (CSEL 40/2, 408f.): *Iustitia porro ea virtus est quae sua cuique distribuit*. This definition of justice is also to be found in Dig. 1, 1, 10 pr. (Pseudo-Ulpian) and *Inst.* 1, 1 pr.; cf. D. Liebs, *Römisches Recht*, 6th completely rev. ed., Vandenhoeck & Ruprecht, Göttingen 2004, 62: *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*. For the shift in Augustine’s thought away from the ancient model, cf. R. Dodaro, *Justice*, in A.D. Fitzgerald (ed.), *Augustine through the Ages. An Encyclopedia*, Eerdmans, Grand Rapids (Michigan), Cambridge 1999, 482.

²⁵⁸ J. Rist, *Augustine. Ancient Thoughts baptised*, Cambridge University Press, Cambridge 1994. According to a review of this book by the Augustinian scholar Frederick van Fleteren, the illustrious professor Rist, in his intention to placate the recent critics of Catholic and Augustinian thinking, fell into anachronism at best, or regrettable misinterpretation at worst. While appraising his great effort, Fleteren observed that Rist made contradictory remarks either concerning Augustine’s thought or its sources. (Cf. F. van Fleteren, *John Rist. Augustine*, in *Augustinian Studies* 26-2 (1995), 167-171).

I.2. A Christian translation of the classical notion of Justice

As we have seen above, the initial understanding Augustine had of the concept of Justice derived from the classical philosophical point of view about the notion. However, exploring his writings, one comes to discover a fundamental shift in his position on Justice. While the Greco-Roman thinkers considered Justice as a virtue (one of the four political virtues along with prudence, temperance, and fortitude) necessary in a human society, Augustine accentuates his understandings of the New Testament and Latin patristic accounts of justice²⁵⁹ by equating the virtue with the love which is due to God and to neighbour. In effect, he follows Christian authors in synthesising the biblical-Christian and the philosophical-juridical understandings of Justice grounding them in Love (*Amor, Caritas, Dilectio*)²⁶⁰. So he translated the classical notion of Justice into Christian terms as giving to God and to one's neighbour the love which is due by virtue of the double commandment of love, as stipulated in *Mt 22:40*, and thus defined Justice as "*dilectio dei et proximi*" (love of God and of neighbour).

Augustine accurately develops these two aspects of Justice with clear expositions. Concerning the love of God, he holds that Justice obliges that God be loved by humanity not according to God's value but according to human capacity. Although God can never be loved as much as He deserves to be loved, he can be "loved wholly" and "by the whole humanity"²⁶¹. To give God the just measure of love is to love without measure. It is but just on God's part, we come to see, that He should sum up all His requests of mankind in a commandment of love. For love is the one thing that is so much one's own that circumstances and people cannot interfere with the giving of it. However, Augustine reminds us that while "no other creature can separate us from the love of God", a creature can separate us, none other than one self²⁶².

His view on love of neighbour is indicated in *De Trinitate* 8.9-10 in conjunction with Romans 13:8: "owe no one anything except to love one another". This Christian notion of justice guarantees that love of neighbour does not stand in competition either with self-love (cf. *Mark 12:33*) or with love of God, because "true love" consists in "loving the other either because they are just or so that

²⁵⁹ Some of the Fathers who must have influenced the shift in Augustine's view of Justice would include Cyprian, *De opere et eleemosynis*; Lactantius, *div. inst.* 5; *Epitome* 54-55; Ambrose, *De officiis ministrorum* 1.20-23; 1. 252; 1.130-36; 1.142; 1.188; 2.49; *Expositio Psalmi CXVIII* 35.7; *De Nabuthae historia* 47-48.

²⁶⁰ Cf. R. Dodaro, *Justice*, in A. Fitzgerald, *Augustine through the Ages*, 866.

²⁶¹ Aug., *De Moribus ecclesiae catholicae*, 1, 8 (PL 32,) : "Audiamus ergo quem finem bonorum nobis, Christe, praescribas... *Diliges*, inquit, *Dominum Deum tuum*. Dic mihi etiam, quaeso te, qui sit diligendi modus ... *Ex toto*, inquit, *corde tuo*. Non est satis. *Ex tota anima tua*. Ne id quidem satis est. *Ex tota mente tua*. Quid vis amplius? Vellem fortasse, si viderem quid posset esse amplius. Quid ad haec Paulus? *Scimus*, inquit, *quoniam diligentibus Deum omnia procedunt in bonum*.

²⁶² *Ibid.*, I, 12, 21 (PL 32, 170).

they might become just”²⁶³. Thus, living justly (*iuste vivere*) means loving one’s neighbours in a way that aids them in living justly by enabling them to love themselves, their neighbours, and God in the manner prescribed by divine law and by the example of Christ.

Along this line, we discover that Augustine’s directions about how to proceed along the difficult path of social justice, the provision of all men/women with what is needed for human and spiritual fulfilment, he refers primarily to the interior: “... the first thing to aim at is, that we should be benevolent, cherishing neither malice nor evil design against another”²⁶⁴. This justice, as the virtue which is the manifestation of the sincerity of brotherly love, does not remain within the one who loves. It is grounded in the objective social order of external goods. At times there is a tendency to think that whereas physical injury to another is an injustice, a failure to extend a helping hand is only a failure in charity to which I was not obligated. But Augustine unites these two acts and regards them both as failures in justice and failures in charity: “... a man may sin against another in two ways, either by injuring him or by not helping him when it is in his power”²⁶⁵. In fact, failure to love one’s neighbour sufficiently, refusal to put oneself to inconvenience and unwillingness to suffer in order to assist him is called “criminal,” by Augustine: a word generally descriptive of unjust acts of major proportions. This lack of charity to a neighbour is considered by him as an assault against God²⁶⁶. Augustine puts it nicely in his comment on the passage of Luke 16, 10 about the rich man and Lazarus: “if you want to hear what that rich man’s crime was, look no further than what you hear from the Truth: he was rich. He used to wear purple and fine linen, and feasted sumptuously every day. So what was his offence? The man lying at his gate covered with sores, and given no help²⁶⁷”.

From another point of view, Justice is understood in conjunction with Augustine’s concept of order. First of all, Augustine insists on order in man. Justice, according to him, is one of the four main forms of loving God. From the other cardinal virtues, which are referred to in the Old Testament (Wis. 8, 1, 4, 7),

²⁶³ Aug., *De Trinitate* 8, 9.

²⁶⁴ Aug., *De Moribus ecclesiae catholicae*, I, 26, 49 (PL 32, 210): “Agendum autem in primis est, ut benevoli simus, id est, ut nulla malitia, nullo dolo malo adversus hominem utamur. Quid enim homini homine propinquius?”

²⁶⁵ *Ibid.*, I, 26, 50, 210 : Sed cum duobus modis peccetur in homine, uno si laedatur, alio si cum potest non adiuvetur eaque ipsa sint quibus mali homines esse dicantur

²⁶⁶ Cf. M. T. Clark, *Augustine on Justice*, in *Revue des Etudes Augustiniennes (REAug.)* IX (1963), 87.

²⁶⁷ Aug. *Sermo* 178, 3 (PL 38, 962): *quod ergo ejus crimen? Jacens ante januam ulcerosus, et non adjutus*. See also e.g. *Ep.* 153, 26 or *Vera rel.* 14, 21. Cf. J. Gaudemet, *La formation du droit séculier et du droit de l’Église aux IVe et Ve siècles*, Sirey, Paris 1972, 178; F.-J. Thonnard, *Justice de Dieu et justice humaine selon saint Augustin*, in *Augustinus*, 12 (1967), 387-402.

he distinguishes it by emphasizing “right relationship”. Rightly related to God, mankind is properly related within him/herself and to the external world of people and things. Not only does justice produce harmony within humanity, peace among men/women, but like the other moral virtues, its value lies in preparing us for the vision of God. This vision begins now with an understanding of what we believe and to the just man/woman belongs this understanding²⁶⁸.

This distinctive view of justice as order within humanity redounding to social order was retained by Augustine until the end of his life. Writing in the *City of God*, and defining Justice in the classical way we have mentioned earlier on: “the virtues whose task is to see that to each is given what belongs to each”, Augustine nevertheless says that the public order of just transactions among men/women is impossible unless there are just humans, rightly related to God by an interior order. Justice begins within. There must first be “the right order within man himself”. The struggle for this internal order is always far from finished, but until justice reigns, human happiness cannot be complete. Augustine advises that the subjection of humanity to God which originates personal integration begins in the mind. He tells us that the man/woman “with God in their thoughts”, is the person who is becoming just. This Augustinian emphasis upon personal order as the preliminary to social order is constantly recurring. If a man/woman has no order within him/herself, “then there is certainly no justice in an assembly made up of such humans. As a result, there is lacking that mutual recognition of rights which makes a mere mob into a ‘people’, a people whose commonweal is a commonwealth”. But neither should we miss the key to this personal order, namely, an attitude of subjection to God which serves as the model for the order which should exist between the soul and the body, between reason and the irrational powers. Only when this order prevails in man/woman, can he/she act justly to others.

From order within, we can evolve to the “order of love” (*ordo amoris*) which imparts a hierarchy of goods established by God as objects of love and desire²⁶⁹. Justice conceived according to this proper ordering of love harmonizes the volitional aspect of love with the created order of nature²⁷⁰. As such, justice expresses a series of right relationships which escalate in value in proportion to the order willed by God. In this context Augustine defines justice as “love

²⁶⁸ Cf. M. T. Clark, *Augustine on Justice*, 87.

²⁶⁹ Cf. Aug., div. qu. 36.1-3; lib. arb. 1.11-15; c. Faust. 22.27; cat. rud. 14.1-2; ep. 140.4; Trin. 9.14; civ. Dei 11. 17;15.22).

²⁷⁰ Cf. Aug., *Confessions* 13.9.10; *Sermon* 335 C.13.

serving God alone and thus ruling well those things subject to human beings”²⁷¹. We could remain with these hints of Augustine’s reflections on Justice on the theoretical level. The second articulation of our work will help us expose how Augustine acted on the practical level in applying Justice in concrete situations.

In this first part of our investigation, we have examined how Augustine made an intelligent use of the cultural patrimony available the philosophical thought of his time to set a background for what we could call his theory of Justice. He valued the position of such philosophers as Cicero by adopting those of their views that are not in contraction with the Christian teachings and ultimately carried out a declination of secular thought into Christian pattern by positing the double commandment of love God and of neighbour as the key to understand and practice true Justice.

II. Augustine’s administration of Justice in his pastoral ministry.

For Augustine, justice was not restricted only to his philosophical reflection and spiritual meditation. As a bishop he fulfilled the role of a magistrate himself, and had to dispense justice in the public court. He responded to concrete problems faced by magistrates and judges. Again and again Augustine shows that moral reasoning must be transformed by the deeper wisdom offered by Christ and the Bible. On the question of activity of St. Augustine as a judge, and the person of the Bishop in general in his relationship with the imperial administration, there are many works carried out by distinguished researchers and specialists in the field. Prominent among them are the works Fr. R. Dodaro, O.S.A., *Church and State*, in A. Fitzgerald, O.S.A.(ed.), *Augustine Through the Ages: An Encyclopedia*, 176-184 ; the one of the Anglican prelate and celebrated patrologist H. Chadwick, *The Role of the Christian Bishop in Ancient Society*, in *Protocol, Colloquy of the Center for Hermeneutical Studies*, Berkeley 1979 ; A. Cunningham’s *The Bishop in the Church: Patristic Textes on the Role of the Episkopos*, Wilmington, Glazier 1985, G. Vismara’s *La giurisdizione civile dei vescovi (secoli I-IX)* Milan, Dott. A. Giuffrè, 1995, to name but a few. In the context of this article, while we cannot elaborate on the various positions of researchers and historians because of the limited space we have; we shall dive into the writings of Augustine himself to find out what he said and did in his position as a Bishop.

²⁷¹ Cf. Id., *De Moribus ecclesiae catholicae*, I, 25.

II.1. Recommendations on how a Christian Judge should carry out his functions.

In his epistolary correspondences, we discover many issues Augustine tackled in his ministry, which constitute important information we wouldn't have got otherwise. On the question of Justice the Bishop of Hippo explicitly took on the rhetoric of what in particular was required from a Christian judge²⁷².

There is a fitting passage on the difference Augustine drew between a Christian and a non-Christian judge²⁷³: The Christian proconsul Apringius was in charge of trials against some Donatist people who had murdered and beaten Catholic priests. This was at the end of the year 411, shortly after the conference of Carthage. Again the issue of religious peace had been settled in favour of Augustine's Catholic party. The imperial commissioner, who had presided over the conference, was Marcellinus, brother of Apringius and Augustine's new friend²⁷⁴. Marcellinus was actively engaged with the enactment of the laws against the Donatists. Upon his verdict the emperor had proscribed Donatism. The clergy was to be separated and exiled, fines had to be paid and Donatists' property has to be handed over to the Catholics²⁷⁵. The offences of murder and the injuries were usually under the jurisdiction of the proconsul, but in the person of Marcellinus a special imperial commissioner in charge was still in Africa. Thus Augustine was not sure who would take the chair in the trial and wrote them both²⁷⁶. He was concerned about court procedure and wanted to advise on the verdict.

Of course, other than with the habit of the Church whose admonition should show clemency, the governance over a province had to be carried out with severity. Augustine acknowledged this: *sed alia causa est provinciae, alia est ecclesiae, illius terribiliter gerenda est administratio, huius clementer commendanda est mansuetudo*. Were Apringius not a good Christian, Augustine would still defend the interest of the church and argue that the acts against servants of God should remain beneficial in the sense that the victims stand out as examples of patience (*exempla patientiae*) and that the church should not therefore be remembered in

²⁷² Cf. E. M. Kuhn, *Justice Applied by the Episcopal Arbitrator: Augustine and the Implementation of Divine Justice*, 82.

²⁷³ Aug., Ep. 134 to Apringius (CSEL 44, 84-88)

²⁷⁴ On Augustine's politically marginal role in African and Roman politics until 412 see McLynn, *Augustine's Roman Empire*; the new friendship (ibid. 46ff.) "offered Augustine access to the empire at a new level and gave him, at last, a platform from which to address Marcellinus' peers", and thus the dedication of his City of God to his dearest son was "not incidental".

²⁷⁵ Cf. *Cod. Theod.* 16, 5, 52. For more detail see W.H. Frend, *The Donatist Church*, Clarendon Press, Oxford 1952, 289ff.

²⁷⁶ Cf. Aug. Ep. 139 (to Marcellinus, CSEL 44, 148-154); 133 (to Marcellinus, CSEL 44, 80-84), 134 (to Apringius, CSEL 44, 84-88).

connection with vengeance; their blood should not be mixed with the blood of their enemies²⁷⁷. If Apringius did not yield, Augustine continues, he would suspect him of hostility. Thus implicitly argued, a hostile judge could not be impartial. Augustine explicitly requests the imperial judges to add his letters to the protocol of the proceedings and so appears to be prepared to take the case to the emperor's own council²⁷⁸. "We act within the limits of our episcopal power when we threaten a person at times with the judgement of men but most of all and always with the judgment of God", he would write a few years later to Macedonius, then the *vicarius Africæ*²⁷⁹. Augustine demands to have a say in the issue: firstly the Church could not be held responsible in case the accused were killed, since she did not indict them for the deeds. He often stressed the obligation not to accuse. Christian moral forbade it. He courageously took it as his responsibility to ask for clemency from the authority. In the aforementioned *Ep. 153* to Macedonius he wrote in deeply touching:

"We do not in any way approve the faults which we wish to see corrected, nor do we wish wrongdoing to go unpunished because we take pleasure in it. We pity the man while detesting the deed or crime, and the more the vice displeases us, the less do we want the culprit to die unrepentant. We are forced by our love for humanity to intercede for the guilty lest they end this life by punishment only to find that punishment does not end with this life" (*Ep. 153, 1,3.*)

We learnt from Possidius that Augustine received an answer from Macedonius to his letter in which he interceded on behalf of a suppliant. Macedonius, granting his request, had this to say on Augustine's wise approach:

I am struck with wonder at your wisdom, both in the books you have published and in this letter which you have not found it too great a burden to send me by way of intercession for those in distress. For the former writings, my venerable lord and esteemed father, possess a discernment, wisdom and holiness which leave nothing to be desired, and the latter such modesty, that unless I do as you request, I could not regard

²⁷⁷ Cf. Aug. *Ep. 134, 3* (CSEL 44, 86). He repeated this in letter 139, 2 (CSEL 44, 150) to Marcellinus: "*propter conscientiam nostram et propter catholicam mansuetudinem commendandam*"; Augustine was afraid that the Donatists would celebrate themselves as martyrs for their religious cause.

²⁷⁸ Aug. *Ep. 139, 2* (CSEL 44, 151): *Etiam gestis iubete allegari epistulas meas*. He is explicit in this regard in this letter to Marcellinus: should his brother support the death penalty he should at least leave the convicted in custody until Augustine asked the emperor for clemency, *ut in custodiam recipiantur, atque hoc de clementia imperatorum impetrare curabimus*.

²⁷⁹ Aug. *Ep. 153, 21* (CSEL 44, 420f): *Agimus quantum episcopalis facultas datur, et humanum quidem nonnunquam, sed maxime ac semper divinum iudicium comminantes*.

myself as remaining free from blame in the matter. You do not insist, like most men in your position, on extorting all that the suppliant asks. But what seemed to you fair to ask of a judge occupied with many cares, this you advise with a humble modesty which is most efficacious in settling difficulties among good men. Consequently I have not hesitated to grant your request as you recommended and as I had given you reason to expect²⁸⁰.

Repeatedly Augustine complained about people taking advantage of this reluctance to hand over offenders. Instead the accusations here had been made by officials, maybe *defensores civitatis*²⁸¹. But since the victims were servants of God, Augustine is very clear: “we do not want the sufferings of the servants of God to be avenged by punishments equal to those sufferings”²⁸². The *defensor civitatis* was a new development in criminal law²⁸³. Originally the initiative of a trial had lain with the victim, the person involved. Augustine thus uses a promising forensic trick. Although the *iurisdictio* was in the hands of the magistrate, the fact that his action depended on somebody’s accusation, resulted in Augustine’s argument that he should be referring to the victim’s interest, which in this case was the Church. Secondly he reminds Marcellinus of his duty and mission: he had come to Africa for the benefit of the Catholic cause. Augustine subtly commands regional authority to testify and decide about the content of this benefit, since he was the responsible churchman in Hippo, where the crimes had transpired²⁸⁴. If this reminder did not show enough power of persuasion he lastly orders it as bishop to his Christian son²⁸⁵. With a Christian judge, he concludes the matter more diplomatically with Apringius, he dealt otherwise; they pursued the same interest. A fellow-Christian with Augustine, Apringius had the judicial authority that Augustine lacked, so there should be no question but that he would extend his hand to help the church²⁸⁶.

²⁸⁰ Possidius, *Vita Aug.*, 20, 3-5.

²⁸¹ Aug. *Ep.* 133, 1 (CSEL 44, 81) : “*Quia non accusantibus nostris sed illorum notoria ad quos tuendae publicae pacis vigilantia pertinebat*”. In Aug. *Ep.* 134, 2 (CSEL 44, 85) they are the preservers of public security, *cura eorum, qui disciplinae publicae inserviunt*.

²⁸² Aug. *Ep.* 133, 1, (CSEL 44, 81): “*Nolumus tamen passiones servorum dei quasi vice talionibus paribus suppliciis vindicari*”.

²⁸³ Fr. R. Dodaro provided important information on the figure of the *defensor civitatis* in the time of St. Augustine in his article *Church and State*, A. Fitzgerald, *Augustine through the Ages.*, 179.

²⁸⁴ Aug. *Ep.* 133, 3, (CSEL 44, 83): “*Ut modum dispensationis meae non supergredi videar*”.

²⁸⁵ *Ibid.*, (CSEL 44, 83f) “...if listening to a friend begging or a bishop giving advice would not suffice”; see *Ep.* 134, 1 (CSEL 44, 84f).

²⁸⁶ Aug. *Ep.* 134, 3 (CSEL 44, 86): *Subdatur sublimitas tua, subdatur fides tua; causam tecum tracto communem, sed tu in ea potes, quod ergo non possum; confer nobiscum consilium et porridge auxilium;* and *Ep.* 134, 2: *Christianus judicem rogo, et christianum episcopus moneo*. Cf. Civ. V, 24: the Christian rulers are to “make their power the handmaid of his majesty by using it to spread his worship to the greatest possible extent” (P. WEITHMAN, Augustine’s political philosophy, in E. Stump, ed., *The Cambridge Companion to Augustine*, Cambridge University Press, Cambridge 2001, 246).

In another situation not involving the Church, and which also seemed to lie beyond his competence, when the Bishop of Hippo interceded on behalf of a farmer named Faventius, he was preoccupied lest the money of the wealthy opponent might prevail in court. Faventius, a tenant farmer, had been taken in custody in an inappropriate manner. Further he had not been granted the legally provided postponement to prepare his case. Instead he had been led by force to Generosus, then governor of Numidia. Augustine emphasized the fact that laws had been violated and asked the governor to be not only an upright, but also a Christian judge and therefore to grant a delay²⁸⁷.

These are some few examples in which, Augustine recommended how Christian judges should carry out their functions.

2.2. Augustine's practice as a bishop-judge

When anatomizing his episcopal "burden" before his people, Augustine confined himself to his specifically pastoral duties, his responsibility for their salvation and moral welfare. A good example of this outpouring of his heart is found in his heart *Sermon 359*. Augustine's perception of his office as judge was closely linked to his duty as leader of his congregation: "I nourish you with what nourishes me, I offer you what I live on myself ... I feed you on what I am fed on myself set food before you from the pantry which I too live on, from the Lord's storerooms", he told his listeners²⁸⁸. He never ceased to tell, how the office was to him a burdensome and dangerous responsibility; the dominance it gave might weaken the demand of modesty, *humilitas*, and service for the task. In Christ's team of good pastors the bishop was to call his flock which would follow his commands²⁸⁹. Of course as no less burdensome he perceived his duty to sit in the episcopal court.

Augustine's episcopal concerns were "countless," but he consistently singles out the demands of jurisdiction, the adjudication or arbitration of "the tumultuous

²⁸⁷ Cf. Aug., *Ep.* 113-116, especially 115 to the bishop colleague and 116 to Generosus, where he demanded: *Et profecto facies quod non solum integrum, verum etiam christianum judicem decet* (Aug., *Ep.* 116, CSEL 34/1, 663).

²⁸⁸ Aug., *Serm.* 339, 4 = *Serm. Frangip.* 2 (ed. G. Morin in *Sancti Augustini Sermones post Maurinos reperti*, Typ. Polygl. Vaticanis, Roma 1930, 193): *inde pasco, unde pascor inde vobis appono, unde ego vivo, de thesauro dominico.*

²⁸⁹ Cf. F. Bellentani, *Episcopus ... est nomen suspecti officii: Il vocabolario del servizio episcopale in alcuni testi agostiniani, in Vescovi e pastori in epoca teodosiana. In occasione del XVI centenario della consacrazione episcopale di S. Agostino, 396-1996. XXV Incontro di studiosi dell'antichità cristiana*. Roma, 8-11 maggio 1996, vol. I (Studia Ephemeridis Augustinianum 58), Institutum Patristicum Augustinianum, Roma 1997, 667-682.

perplexities of other people's suits²⁹⁰". Augustine is by far our fullest source of information on the late antique bishop's judicial role, and, although this material has been shrewdly analysed from different perspectives it has now been shown that the institutional basis of the *episcopale iudicium* was far less secure than traditionally believed²⁹¹. His immersion in his flock's "greeds and needs" (*Ep.* 139.3) is not to be taken for granted as part of his job description. The Bishop of Hippo may well have invested far more time and effort in hearing cases than most other bishops – certainly far beyond the "Monday slot" for which apostolic sanction was claimed in the East²⁹².

One of our most important sources about the activities of the bishop of Hippo is obviously Possidius' *Life of Saint Augustine* already quoted above regarding the Bishop's recommendation and intercession with secular powers. From an observer's point of view, Possidius portrayed Augustine's judicial activities modelled on the strong ideals of educational authority and wisdom applied to service of the Church²⁹³. Concerning court procedure, Augustine was aware of being in a tricky position, since whoever decided against a friend was likely to lose one²⁹⁴. Possidius accentuated Augustine's pastoral, administrative and forensic activities. He remembered him as working quite hard: "Often he remained without food until midday, sometimes the whole day, always examining and arbitrating, focusing on the state of their Christian souls, how much someone advanced in his faith and good manners or retreated from them²⁹⁵". The order of procedure is again essential: Augustine usually examined (*noscebat*) and then arbitrated (*dirimebat*); on the basis of the results he came to his verdicts. Christian attitude and morality of the parties had a major impact, Possidius stated. Through the study of Scriptures the bishop acquired judgments "regarding the Christian soul²⁹⁶".

However this was not always the main issue in the process of arbitration: "And when he saw that circumstance gave the opportunity, then he taught the parties

²⁹⁰ Aug. *On the Works of Monks*, 29.37)

²⁹¹ Cf. N. B. McLynn, *Administrator: Augustine in his Diocese*, in M. Vessey (ed.), *A Companion to Augustine*, 316.

²⁹² Cf. *Constitutiones apostolorum* 2.47 (The best critical edition of ancient document is probably that of Franciscus Xavier Funk, *Didascalia et Constitutiones Apostolorum*, Ferdinandus Schoeningh, Paderborn1905.

²⁹³ Cf. E.M. Kuhn, *Justice Applied*, 90.

²⁹⁴ Cf. Possidius, *Vita Aug.* 19, 2 (ed. W. Geerlings in Possidius, *Vita Augustini*. Zweisprachige Ausgabe, Schöningh, Paderborn etc. 2005, 64): *de amicis vero unum esset, contra quem sententia proferretur, perditurus.*

²⁹⁵ *Ibid.*, 19, 6, (ed. Geerlings) "Et eas aliquando usque ad horam refectionis, aliquando autem tota die ieunans, semper tamen noscebat et dirimebat: intendens in eis christianorum momenta animorum, quantum quisque vel in fide bonisque moribus proficeret, vel ab iis deficeret."

²⁹⁶ This claim turns out to be true, since Augustine extensively quoted the Scriptures in his letters to officials, making it his most prominent source of reference.

the truth of the divine law, inculcated them, admonished and instructed them, how they could attain eternal life.²⁹⁷"

Augustine was settling worldly disputes according to worldly rules and only when opportuned did he lecture on the wider, godlier aspects of the laws (*divinae legis veritatem*). As his written questions to the lawyer Eustochius show, he had a team of advisers for legal questions²⁹⁸. And again this duty to judge according to temporal law he had gained from Paul, 1 Cor. 6, 1-6:

*"Quoniam ergo praecepit apostolus, ut saecularia iudicia si inter se habuerint christiani, ea non in foro, sed in ecclesia fiant, unde nos necesse est perpeti tales iurgantium quaestiones, in quibus nobis etiam terrena iura quaerenda sint, praecipue de condicione hominum temporali"*²⁹⁹

The apostle has commanded that, if Christians have with one another cases concerning worldly affairs that need adjudication, they should be heard in the church, not in the courts. For this reason we have to endure the sort of petitions on the part of litigants in which we have to learn the laws of this world, especially concerning the temporal condition of persons. (transl. by R. Teske;).

The attitude might explain the good reception he attained in his court. His courtroom was forever filling with people who expected a just decision that was free of charge and corruption; that is, they expected decisions unlike those of civil judges. He might have come across as incorruptible, diligently listening and gingerly deciding; it might have been a question of his personal charisma, but certainly his knowledge of the earthly rules could be relied on. Maybe they knew better what to expect, and so they traded in their possibility to appeal at the next instance³⁰⁰.

Apart from the testimonies we get from Possidius and from some of his traditionally known letters, Augustine's handling of his caseload is best illustrated through his *commonitoria*, the memoranda produced as part of his judicial business, whose peculiarities – on the one hand public (and copied in his archive) and on the other informal – have only recently been analysed. Several such *commonitoria* feature in Augustine's letter collection, as instruments of

²⁹⁷ *Ibid.*, 19, 4 (ed. Geerlings): "Atque compertis rerum opportunitatibus, divinae legis veritatem partes docebat, eamque illis inculcabat, et eas quo adipiscerentur vitam aeternam (Mc 10, 17) edocebat et admonebat: nihil aliud quaerens ab iis quibus ad hoc vacabat, nisi tantum obedientiam et devotionem christianam, quae et Deo debetur et hominibus: peccantes coram omnibus arguens, ut ceteri timorem haberent (1 Tim 5, 20)".

²⁹⁸ Eustochius was probably a provincial lawyer frequently consulted by Augustine.

²⁹⁹ Aug., Ep. 24*, 1 (CSEL 88, 126). See n.65 below for an explanation about the series of letters to which this particular belongs.

³⁰⁰ E.-M. Kuhn, *Justice Applied*, 91.

negotiation or explanation; but one of the outstanding features of the “Divjak” letters³⁰¹ – the cache of documents that, within the last generation, have brought to our understanding of Augustine’s social position – is the number of memoranda that are included or mentioned. Above all, for our purposes, they provide new access to the documentation that was generated by Augustine’s judicial role, at a level which has been suppressed during the selection process that resulted in the canonical letter collection. Here we come closest to catching Augustine the administrator in action, and close inspection suggests much more agility and imagination in his handling of business than his own rhetoric of patient victimhood would allow³⁰². Let’s now consider practical examples from the resources provided by Divjak letters.

From the information contained in *Ep.8**, we come to discover that even a Non-Christian might have had higher hopes to get what he wanted and to succeed in his cause, when referring to bishop Augustine instead of going to ordinary judges. Augustine’s handling of the complaint of the Jew Licinius shows what he expected of his own colleague-bishops. It was not so opportune to teach Licinius the Jew about God’s justice. Augustine rather rebuked one of his own colleagues, the seemingly arrogant bishop Victor, who was not such a model bishop after all: The case was all about some little pieces of land, *quos agellos*³⁰³. It seemed they had formerly all belonged to the mother of the Jew Licinius. Apparently the mother was not on good terms with her son. Perhaps she had not been altogether happy with his choice of wife. The son had bought the land from the people to whom his mother had previously sold it. He then had given part of it to his wife upon their marriage. The whole lot had been the object of a sale of the old lady again, as if she were the proprietor. But in truth now her son and his wife were the owners of the land and were in possession of it. Regardless of this fact, Bishop Victor, the purchaser, forcefully took possession. When Licinius protested, Victor replied that he had bought it from his mother. Licinius should argue with her and ask Victor for nothing, because Victor did not owe him

³⁰¹ About these previously unknown letters, there are a whole lot of issues. In 1969, Johannes Divjak, a scholar from Vienna, came to France to work on the project. In the Bibliothèque Municipale of Marseilles, to the delight of Augustine scholars, Divjak discovered a manuscript of letters that included twenty-nine letters of Augustine that were wholly unknown. The manuscript in question had been produced about the year 1440 for King René of Anjou, a rich but minor monarch. This manuscript had been known, but it had never been closely examined. It was assumed that an elegant late medieval manuscript could hardly contain any new work of an author as ancient and as frequently copied as was Augustine. In reference to these letters, it is conventionally agreed to abbreviate them with an asterisk in front of the number of the Letter concerned. Thus we shall continuously use *Ep.* with the number followed by*.

³⁰² Cf. N. B. McLynne, *Administrator: Augustine in his Diocese*, 316.

³⁰³ Aug. *Ep. 8** (CSEL 88, 41-42).

anything: *Ego emi si male mihi vendidit mater tua, cum ipsa litiga! A me noli aliquid quaerere, quia nihil tibi debeo.* So Licinius turned to Augustine for help.

Licinius's documents had proven the complaint well founded and hence had convinced Augustine. His memorandum to Victor provides evidence for Augustine's high regard and knowledge of property law: he reproaches Bishop Victor for severe ignorance of the laws (*ignorantiam iuris*) and sets the issues right. Victor had to give back the estates because his action contradicted what justice demanded and the laws cried for, *necesse est enim ut eam recipiat intercedente iustitia clamantibus legibus.* Ultimately he referred to the word of the Apostle and cited 1 Cor 10:32: no offence should be given to the Jews or the Greeks nor to the church – a passage that preaches respect and in a way tolerance³⁰⁴. Better for Victor thus to do what was just, rather than to risk trial before an episcopal court, *Melius est autem, ut a tuo carissimo frater commonitus facias quod iustum est, quam ut ista causa veniat ad episcopale iudicium.* In this eventuality, Victor at best would be asked to do penance, at worst he would be permanently deprived of his office as bishop³⁰⁵.

Augustine's most extravagant hypothesizing occurs in the next Divjak letter, a memorandum produced in reply to one from Alypius (Ep. 9*), concerning a high-profile case brought to the latter's tribunal which had nothing to do with Augustine. A *vir honestus*, member of the legal profession most likely, had abducted and taken with him, a nun to make her the "plaything of his debauchery", *ad ludibrium stupri de patria duxerat*. This phrasing means that he – as they were not married and she had vowed abstinence – had dishonoured her, by taking her with him, be it with or without her consent³⁰⁶. The clerics, who had traced and found him with her, may-be in a church³⁰⁷, had obviously given him a good beating. In late antiquity social status and legal privilege were divided in society between more respectable and lower people, *honestiores* and *humiliores*. Members of the provincial *curiae* for example or lawyers (as here) received better treatment especially in criminal procedure, where they were exempt from torture

³⁰⁴ On Augustine and the Jews see B. Blumenkranz, *Augustin et le judaïsme*, in *Recherches Augustiniennes*, vol. I (1958), 225-240 (repr. in B. Blumenkranz, *Juifs et Chrétiens. Patristique et Moyen Age*, Variorum Reprints, London 1977, nr. III). In Hippo there was a Jewish community as well as in Carthage, where Augustine often went – the biggest Jewish community in Africa was there.

³⁰⁵ Cf. the measures taken against bishop Antoninus, a bird of the same feather, who robbed his town to build a villa for himself, Augustine's letter to Fabiola, Ep. 20*; see S. Lancel, *L'affaire d'Antonius de Fussala*, in *Les Lettres*, 267-285 ; Ch. Munier, *La question des appels à Rome d'après la Lettre 20* d'Augustin*, *ibid.*, 187- 199.

³⁰⁶ Though Augustine uses the mild 'duxerat' instead of 'abduxerat', he is sure that she was forcefully subdued to the man's lust. Aug. Ep. 9*, 2 (CSEL 88, 44): "Libidini suae subdere".

³⁰⁷ This is not obvious; it cannot be deduced from 9*, 2, but could from 9*, 3, where Augustine is shocked about *malefactis nequissimorum hominum, quae in ecclesia nefandis ausibus perpetrant*.

or beatings³⁰⁸. Therefore unhappy about his treatment, the man had appealed to Pope Celestine (422-432) and had been granted a trial against the rough clerics before bishop Alypius' court. Alypius was given papal order to investigate and then discipline the clerics for violating the privileged man. These developments did not much please Augustine. It gave him the occasion to advise his friend in charge who had asked his opinion on the *quaestio iuris*.³⁰⁹¹⁰⁵ Augustine had already been interviewing a presbyter named Comodianus, allegedly involved in the case somehow, who had complained about the oncoming trial to Augustine. The latter had questioned him about details, but Comodianus claimed to have seen nothing. Only responsible for the subordinate clerics involved, he had not been himself present at the scene of the beating. In this confused situation Augustine writes to Alypius, he was worried lest the other clerics should be punished and the abductor walk away unharmed. One is tempted to detect some trace of criticism of the worldly laws³¹⁰. For Augustine seems to be quite excited and annoyed that *honesti homines* might think they could have a licence to do whatever they pleased, just because they were legally granted the privilege not to be corporally punished.

Augustine is much more concerned with church procedure and the treatment of cases where somebody appeals with a false or incomplete story and consequently gets granted favours. True, Augustine does say that the civil laws were not useful: *leges publicas nequeant*. Yet civil laws might have covered the offence. Given the facts, a *vir honestus* might well be punished for the crime of *stuprum* (e.g.) and so lose his privileges once and for all in a trial before ordinary judges through the punishment of *infamia*. Augustine himself is aware of this possibility, since he holds that he could not believe that clerics in defence of the Lord's house were to be punished for doing something so much less than the civil laws provided for, *incomparabiliter minus quam paretur legibus publicis*, and he explains their alleged motivation in beating and his justification of it: "...in order that there might be something to fear on the part of those who have no fear that the bishop or clerics may bring the civil laws to bear against them"³¹¹."

Another sex crime, against a nun, is treated at Ep. 15*, but this time Augustine seems to let off the offender lightly, recommending only that he lose his position

³⁰⁸ Cf. Aug. Ep. 9*, 2 (CSEL 88, 43-45): *cum honorem vel curiae vel fori habent, quem videtur habere iste de quo agitur*.

³⁰⁹ Alypius had (in 427) just come back from a mission to Italy, where he had met Celestine. This explains why he, thus known, is put in charge.

³¹⁰ Cf. E.-M. Kuhn, *Justice Applied*, 97.

³¹¹ AUG. Ep. 9*, 3 (CSEL 88, 45): "Quod donec fiat, quae sententia proferenda sit adversus dei servos qui pro domini sui domo faciunt aliquid sceleratis incomparabiliter minus quam paretur legibus publicis, ut sit utcumque quod timeant qui easdem publicas leges contra se episopis vel clericis moveri posse non timent, omnino non video".

(he was legal officer to the devout senator Dorotheus). The bishop creates a mechanism that commits the senator to a certain response before he has heard the facts of the case. The danger, one suspects, was that a full investigation conducted on Dorotheus' own terms would uncover mitigating circumstances (and good land agents were hard to find). In this case, too, the nun had obviously brought her complaint to Augustine, and had presumably found his own initial solution (excommunication and penance) inadequate. With his memorandum he could be seen to be taking action on her behalf. Such an interpretation does not denigrate Augustine: the more we recognize the limits of his reach, the more we can appreciate his skill at finding means to obtain the partial redress that would also serve to reaffirm his principles.

In *Ep10**, Augustine evokes a dramatic situation. It's an exchange of memoranda with Alypius. The main interest lies in the postscript, which takes up five sixths of the text and introduces the sensational topic of the depredations of slave traders in the territory of Hippo and the kidnapping of children for sale abroad. Here we see Augustine at work to alleviate evil, and his method – he attaches a copy of the existing law covering such crimes, and asks Alypius to secure a revision better suited to Christian enforcement – has been treated as a model of carefully targeted lobbying³¹². But the letter is both more and less than a straightforward administrative response to a humanitarian crisis. It is peculiar, for example, that Augustine chose to lead off with an assault on a farmhouse where the "slavers" killed the men and kidnapped the women and children, which was still an unconfirmed rumour, especially since his own investigations had uncovered a crime hardly less foul, a child snatched by brigands from her parents' home.

Here we see the Bishop applying himself with determined energy to a problem that has just emerged, and the text does show him applying a cosmetic remedy to an evil inherent in his society, and beyond his (or anyone else's) power to solve. According to McLynn Augustine was caught uncomfortably between Roman law and Christian charity³¹³. In an outburst of the latter, four months previously, in his absence, his people had rescued some 120 slaves from a ship and nearby holding-pens. The fate of these unfortunates was still uncertain when Augustine wrote, since "Galatian slavers" (the pejorative ethnic label is repeated over and again) had found patrons to support their bid to reclaim their merchandise. Augustine in his capacity of Bishop tried his best to make sure

³¹² Cf. N. B. McLynn, *Administrator: Augustine in his Diocese*, 316.

³¹³ Cf. *Ibid.*, 317.

excesses in this area of the society he lived in are reduced. That one on earth has been able to totally quench the fire of injustice is a fact. What we appraise in the Bishop of Hippo is not the solutions he brought to issues at hand, but as in the aforementioned case, his humanitarian initiatives.

We could multiply examples of Saint Augustine's praxis as a bishop-judge. His Christian faith remains the source of inspiration. In short, this second section of our article has shed light on the praxis of Augustine as a bishop with regard to justice

Conclusion

We have looked at Augustine's thought on Justice and seen how, while acknowledging some of the aspects of the traditional understanding of the notion, he grounded his position on Christian faith and the heritage he got from patristic tradition. He did not limit himself to theorising or instructing on how to apply Justice in society. In real life situations, moved by Christian love, the Bishop of Hippo took concrete actions to aid those oppressed by injustice. To the limit of his power he stood against the long-standing evil that had succeeded in thoroughly pervading human society.

From the texts we read and studied, we could say that injustices resulted not from the body of administration, not from its regulations and prohibitions, courts and appeal-courts, but from the weak human condition. Advocates earned money to defend their clients whatever their case might be; judges accepted money for their verdicts: one sometimes had to pay money even for a just verdict: "These gains (the earnings of corruption) are as wrongly possessed as those that come through theft", "and I would demand their restitution, but there is no judge under whom they can be claimed.³¹⁴" In Augustine's experience it was beyond his immediate influence and rested in God's hand: a confession of powerlessness by an otherwise strong-minded and always highly committed bishop in the African province of Numidia³¹⁵. Some scholars, based on various conjectures, hold that the Bishop has actually no power whatsoever to solve any social problem since the imperial legislations have never succeeded to establish a

³¹⁴ Aug., Ep. 153, 25 (CSEL 44, 426): *Haec atque hujusmodi male utique possidentur, et vellem restituerentur; sed non est quo judice repetantur.* Augustine's letter to Count Macedonius well displays his dark view on selfrighteous people and on forensic bribery.

³¹⁵ Cf. E.-M. Kuhn, *Justice Applied*, 103.

*lex Christiana*³¹⁶. But Augustine's writings themselves tell us how many humanitarian initiatives he undertook in his capacity of a Christian bishop-judge, some of which did have positive exits.

In the last resort, we all are aware of the fact that until final judgement, the just cause will often fall short. For Augustine this shortfall was exemplified by the suffering of *humillimus* Christ. Augustine's role as a bishop was to broker for a Christian *caritas*, that was so much closer to divine justice than any procedural and for this purpose only property-managing or order-restoring regulation. To Augustine, the office and duty of a bishop was to lead in this enterprise. His conversion to Christianity was the turning point: the imitation and following of *Christus iustus et iustificans*³¹⁷ became essential to find the *vera iustitia* and crucial to Christian life and leadership³¹⁸. From there he would draw his main legitimacy to instruct, admonish and teach about truth as bishop and judge. Christ was the source of his call to be followed even by imperial officers of the highest status in matters of justice.

³¹⁶ For further readings on this aspect one could see Gaudemet, *L'Église*, 351, where he stresses how the bishop legally to significant extent remained a private person. Also C. Ando, *Religion and ius publicum*, in C. Ando - J. Rüpke (ed.), *Religion and Law in Classical and Christian Rome*, Steiner, Stuttgart 2006, 126-145 holds that Theodosius did not succeed in establishing the *lex Christiana* and so Augustine remained an outsider.

³¹⁷ Augustine emphasises Christ's role as *iustus et iustificans* (cf. *Rm* 3,26), in particular, during his controversy with the Pelagians, in order to highlight the grace of Christ as necessary for justification, and to underscore the exclusiveness of Christ's place in history as perfectly *iustus*. Cf. R. Dodaro, *Iustis (Iusti)*, in *Augustinus Lexikon*, Vol.3, 884.

³¹⁸ Cf. E.-M. Kuhn, *Justice Applied*, 104.