Augustine's Punishments

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During Augustine's life, government authorities were generally friendly to the Christianity he came to adopt and defend. His correspondence mentions one imperial magistrate in Africa, Virius Nicomachus Flavianus, a pagan vicar of Africa who seemed partial to Donatist Christians whom Augustine considered secessionists. Otherwise, from the 390s to 430, assorted proconsuls, vicars, and tribunes sent from the imperial chancery and asked to maintain order in North Africa were willing to enforce government edicts against Donatists and pagans.[1] To an extent, Augustine endorsed enforcement. He was troubled by punitive measures that looked excessive to him, yet scholars generally agree with Peter Burnell that Augustine unambiguously approved punitive judgments as an "unavoidable" necessity. But Burnell and others seem to make too much of it: Augustine's position on punishment supposedly indicates that he posited "an essential continuity" (rather than emphasized the contrast) between "any given state" and the celestial or "eschatological" city of God.[2]

[1] See Augustine, epistle 87,8. For Augustine's work, I consulted the relevant volumes of the *Corpus Christianorum, Series Latina*. All translations are mine. For Flavianus, see Raban von Haehling, *Die Religionszugehörigkeit der hohen Amsträger des romischen Reiches seit Constantins I Alleinherrschaft bis zum Ende der theodosianischen Dynastie* (Bonn: Habelt, 1978) 573. For the mix of officials in North Africa and "la vitalité de la vie politique et des institutions dans le premier tiers du V^e^ siècle," see Claude Lepelley, "L'Afrique à la veille de la conquête Vandale," *Antiquité tardive* 10 (2002) 61–72. Although authorities were favorable to catholic Christianity, when Augustine became one of its bishops in the 390s, the municipal authorities in his see may have been Donatists, as Christoph Hugoniot suspects; see Hugoniot's "Les legats du proconsul d'Afrique à la fin du IV^e^ siècle et au début du V^e^ ap. J.-C. à la lumière des sermons et lettres d'Augustin," *L'Africa romana* 14 (2002) 2067–87, at 2084. Most prominent among the indigenous African officials with close connections to Donatist prelates, Gildo, appointed to oversee provincial affairs by Emperor Theodosius I, withheld grain shipments to Rome and died a rebel in the late 390s.

[2] Peter Burnell, *The Augustinian Person* (Washington, DC: Catholic University of America Press, 2005) 136–66, at 148 and 159. Christoph Horn argues that forms of domination and punishment, although regrettable and "morally inadequate," were, for Augustine, "functionally necessary"

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What follows will review some of Augustine's most often cited remarks on punishment and a number that are less well known.[3] We shall find that his approval was not only grudgingly given and guarded at times but relatively restrictive and occasionally accompanied by doubts about the effectiveness of punishment in terrestrial cities. And, even when he acknowledged that severe measures usefully preserved terrestrial peace, he underscored distinctions between that peace and the peace of the celestial city. Augustine depicted fear and force in this world in ways that ought to give pause to historians prepared to emphasize "essential continuit[ies]" between a punishing government and Christianity and ready to propose "complementary roles" for each—and ought to give pause as well to political theorists eager to reconstruct Augustine's "morally robust civic liberalism."[4]

God punished. Israel was sent into exile for infidelity. The wreckage left in the wake of the Vandal invasion of Africa could be construed as punishment for Christians' attachments to worldly possessions, much as Rome's fate was years before, specifically, the city's humiliation in 410. At that time Augustine proposed that the Romans received the thumping they deserved for having interpreted material successes as signs of divine favor and having put their faith in what was "unstable and perishable."[5] The threat of eternal torment loomed over the exceptionally greedy. To those who doubted God could set an inextinguishable fire for sinners, fire that would perpetually scald without consuming them, Augustine catalogued marvels in

(*moralisch inadäquat aber funktional notwendig*) ("Augustinus über politische Ethik und legitime Staatsgewalt," in *Augustinus: Recht und Gewalt* [ed. Cornelius Meyer and Guntram Förster; Würzburg: Echter Verlag, 2010] 49–72). In what follows, I discuss other studies of Augustine's positive take on punitive measures and political life, but John von Heyking's review concludes that Burnell's book "takes the strongest view," connecting public policy with political theology ("Decorating and Deforming the Universe with Man's Moral Beauty: Recent Interpretations of Augustine's Political Thought," *The Review of Politics* 69 [2007] 668–80, at 677).

[3] For other essays that concentrate on Augustine's punishments, see Alain Houlou, "Le droit penal chez saint Augustin," *Revue historique de droit français étranger* 52 (1974) 5–29; Terrance C. McConnell, "Augustine on Torturing and Punishing an Innocent Person," *Southern Journal of Philosophy* 17 (1979) 481–92; Todd Breyfogle, "Punishment," in *Augustine Through The Ages* (ed. Allan D. Fitzgerald; Grand Rapids, MI: Eerdmans, 1999) 688–90; and John von Heyking, "Augustine on Punishment and the Mystery of Human Freedom," in *The Philosophy of Punishment and the History of Political Thought* (ed. Peter Karl Koritansky; Columbia, MO: University of Missouri Press, 2011) 54–73.

[4] For "complementary roles," see Jill Harries, *Law and Empire in Late Antiquity* (Cambridge, UK: Cambridge University Press, 1999) 148–49. For "robust civic liberalism," see Eric Gregory, *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship* (Chicago: University of Chicago Press, 2008) 355.

[5] Augustine, *De excidio Urbis Romae* 8.9. For the Vandals' part in divine penology, see Brigitta Stoll, "Die *Vita Augustinini* des Possidius als hagiographischer Text," *Zeitschrift für Kirchengeschichte* 102 (1991) 1–13, at 7–8.

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nature confounding expectations. If limestone's reactions to the elements, notably fire and water, seemed unnatural, why should one presume God's punishments conformed to common sense?[6]

That answer—that the supernatural will naturally seem strange—begs the question of cruelty. From Augustine's protests against "softening" the interminably painful punishments that awaited the damned, we might infer that some Christian interpreters were uncomfortable with the nature and duration of divine punitive practice. Augustine, on that issue, lamented that tender hearts were parts of Christians' constitutions.[7] The tenderhearted, after all, could be much more susceptible to Donatist Christians who complained, during the late fourth and early fifth centuries, when rival Christian bishops—Augustine among them, after 406—urged authorities to intimidate and punish them. Donatists referred to Jesus's instructions to the apostle Peter to sheath his sword rather than to punish would-be persecutors.[8]

Augustine could be forgiving. He poured praise on a Donatist bishop who surrendered his see, ostensibly for the sake of the peace and unity of the African church.[9] For years, trusting that instruction and kind words could draw Donatist secessionists back into the church, he was prepared to let their previous indiscretion go unpunished. He doubted the appropriateness of formulating new—and enforcing old—punitive measures advocated by his colleagues. But, as his invitations to reconciliation were refused, he defended the use of intimidation and coercion, and he referred to New Testament passages that seemed to sanction bruising behavior. He deployed the parable in which Jesus ordered that "guests" be compelled to attend a wedding banquet. He remembered that the apostle Paul announced he was ready to punish disobedience and that Paul himself had been "brought to the gospel" by some rough handling.[10]

To Augustine, the secessionists' sense of superiority—which, in their judgment, was legitimate and licensed them to confiscate the churches from which they seceded—was conspicuously contrary to the humility prescribed by their sacred texts. Donatists argued that baptisms in their rivals' churches were invalid because bishops presiding over that sacrament declined to countenance the century-old coup against colleagues who allegedly collaborated with pagan persecutors of the church. Baptisms in the early fifth century, in other words, were bogus as long as presiding bishops would not repudiate predecessors in the early fourth century whom the first Donatists accused of having caved under government pressure. Augustine denied that a bishop's allegiance to long-gone partisans or his character affected sacraments he administered. (Indeed, the secessionists ought to

[6] Augustine, *De civitate Dei* 21,4.

[7] *Ibid*. 21,23; Augustine, *Enchiridion de fide, spe, et caritate*, 112.

[8] Augustine, *Contra litteras Petiliani* 2.89,194.

[9] Augustine, epistle 69,1. See also Augustine, sermon 181,6.8.

[10] Augustine, epistle 185,21–24 (*poena corporis ad Evangelium coactus intravit*; 185,22).

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recall, Augustine said, that Jesus had accepted baptism from someone inferior to himself.[11]) In Augustine's judgment, the Donatists' arrogance ensured that they would be subjected to those dreadful, eternal punishments that were reserved for those who misplaced their faith in what was "perishable," in specious virtues as well as possessions. Hence, when he eventually accepted that it was advantageous (*non inutile*) to ask the government to assist the church in disciplining, intimidating, correcting, and coercing secessionists, Augustine explained that punitive measures were in the Donatists' interest. They were "paternal" (*paterna flagella*), sparing secessionists eternal torment in the hereafter as well as stopping them from sowing discord in the here and now.[12]

Ivonne Tholen notes that Augustine rarely introduced the devil into his anti-Donatist polemic.[13] Nonetheless, the Donatists' libels against the Christianity that he and his closest colleagues defended tempted Augustine to brand his rivals as diabolical. He was ready to bury the past (*pro me sunt gesta omnia*), he insisted, but a demon "implanted" in the Donatists' souls kept them dredging up and disseminating their ascertainably inaccurate account of the origins of the schism. The secessionists' persistence attested a satanic presence and turned their schism into sin and heresy. In effect, they forfeited their Christianity, and the devil's counsels kept Donatist clergy and laity beyond non-coercive recall.[14]

They were a sect, and, Augustine repeatedly pointed out, the sectarians were uncharitable toward each other—spawning sub-sects—as well as uncharitable toward Christians who believed the secession of their forebears and the enduring disunity unwarranted. And, to Augustine, their fissiparous character exhibited in the intense rivalry among Donatists made their claim to be the authentic Christian church ludicrous. Besides, all Donatists sects had severed their connections not only with many North African churches but also with all, save a very few, Christians across the Mediterranean, as if to say that "Christ only bought Africa"—and a portion of Africa, at that—with his atonement for the sins of all the faithful. Did Jesus die to redeem a region or to save the secessionist squadrons therein, which—unforgiving—vilified the faithful who lived among them and preferred to remain in communion with churches in Rome or Arles, that is, with a universal or catholic church? *Noli quiescere*; one must not let such absurdity pass undisputed, Augustine said, stipulating that reprimands be accompanied by blows (*verberibus*).[15]

[11] Augustine, *In Evangelium Johannis tractatus* 13,6.

[12] Augustine, epistles 87,7 and 93,1.

[13] Ivonne Tholen, *Die Donatisten in die Predigten Augustins: Kommunikationslinien des Bischofs von Hippo mit seinen Predigthören* (Berlin: LIT, 2010) 170–71.

[14] See Augustine, sermon 46,37 (*exire haereticarum est*) and Augustine, *Vingt-six sermons au peuple d'Afrique* (ed. François Dolbeau; Paris: Institut d'Études Augustiniennes, 1996) sermon 2,22.

[15] Augustine, *In Evangelium Johannis tractatus* 10,9 and 13,14. When some Donatists welcomed the blows with words from Jesus's Sermon on the Mount, "blessed are the persecuted," Augustine offered a clarification worth quoting at length: "If suffering punishment were always worthy of praise, it would have sufficed for God to have said 'blessed are the persecuted' without adding 'for the sake

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He acknowledged that the fairness of battering the sectarians might not have been immediately obvious, but he asserted that God had placed secular powers in sympathy with the church for good reason, knowing his faithful would eventually be in danger of being overtaken by rivals. So it was fitting—and not unfair—for the faithful to urge the government to use punitive measures. Indeed, there could be no unfairness (*iniquitas*) in God; punishments and the suffering they occasioned were "remedial" as well as "paternal." Augustine and his colleagues were not seeking vengeance. They were looking for—and they found, he said—the gratitude of those Donatist rivals who, moved by fear and force, saw the error of their ways and rejoined the Catholic Church.[16]

Executions precluded reconciliation, so Augustine opposed them. Besides, capital punishment, he claimed, even if warranted by the crimes of murderous thugs who attached themselves to secessionist sects, soiled the memory of their martyred victims.[17] Furthermore, executing offenders put their accusers in danger of retaliation, and the death penalty would keep the wronged-yet-not-vindictive among the victims' families from coming forward to report what would lead to another's death. Augustine's principal objective was religious reintegration, which, pro tempore, required deterrence. He expected reconciliation to follow, reconciliation that would end a century's cycle of violence and, ideally—and orderly—restore the African church's peace. As Júlio César Magalhães de Oliveira proposes, in another context, Augustine was "a man of order."[18]

Still, his sense of order did not incline him to proclaim his support for the government's efforts to punish the Manichees, perhaps because, in his youth and for nearly ten years, he had been fascinated by their ideas. He grew disenchanted only after he encountered Faustus, one of the cult's impresarios, who, if we may trust the account in Augustine's *Confessions*, failed to live up to his reputation for eloquence and intelligence. He seemed incompetent, and Augustine let on later that he was suffering from buyer's remorse immediately after their first conversations. From the time he committed to Christianity, he also understood that the expectations Faustus and other Manichaean specialists encouraged—expectations that they knew and would reveal secrets in the faith's sacred texts as well as in nature—encroached on

of righteousness.' Similarly, if persecuting were always worthy of blame, why would the psalmist say, 'I will persecute the one who whispers ill of a neighbor'? Thus, sometimes one who is persecuted is unrighteous, and the persecutor is righteous. Assuredly, the wicked always persecute the good. The wicked injure [*nocendo*] the good unjustly. But the good look after the wicked [*consulendo*] to discipline them. . . . In all this, we should take motivation into consideration to find out who acted for the truth, who acted unfairly, who punished to harm, and who punished to correct"; Augustine, epistle 93,2,8. Also see Augustine, sermon 94a,1: non enim facit martyrem poena, sed causa; the cause motivating one to die and not the punishment (or death) makes one a martyr.

[16] Augustine, epistles 93,5.17; 100,1; and 185,7.26. For *iniquitas*, see Augustine, sermon 27,6.

[17] Augustine, epistle 134,3.

[18] Augustine, epistle 100,2; Júlio César Magalhães de Oliviera, "Ut majores pagani non sint: Pouvoir, iconoclasm, et action populaire à Carthage au début du V^e siècle," *Anitquité Tardive* 14 (2006) 253–54.

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the church's prerogatives.[19] Even before it tolerated Christianity, the government, for its part, considered the cult subversive. Late in the third century, laws were passed against Manichaeism, and its persistence prompted subsequent edicts. Provincial officials were told in 407, while Augustine was formulating justifications for the punishment of Donatists, that they would be punished if they did not enforce existing laws and punish the Manichees.[20] No doubt, he was satisfied—by then he thought Manichaeism put souls' salvation in jeopardy—but he was relatively indifferent to proliferating punishments.[21]

Generally, he believed punishment deterred, disciplined, and suppressed—but it did not contribute to the establishment of genuine justice (*vera justitia*), which was unattainable in this wicked world.[22] He may have suspected as much by the late 390s, when he confided what had become of his political ambitions ten years before.[23] Robert Dodaro, however, could be correct contending that Augustine's spiraling despair of ever achieving genuine justice with retributive, restorative, punitive measures related to his increasing concern to counter Pelagians' optimism. Even so, his comments on magistrates' inability to do more than damage control, composed as he became acquainted with Pelagianism, seem based on previously expressed pessimism.[24]

His most explicit references to damage control surfaces in letters to Macedonius, the Vicar of Africa, in 413 and 414. There, Augustine wrote about the parts punishment played in keeping wickedness in check (*coercentur mali*) and in restraining the impudence of persons who, without the likelihood that they would pay for their outrages, would take every chance to prey on their virtuous and peaceable neighbors (*coercetur audacia*). Augustine was trying to convince Macedonius that bishops, who petitioned authorities to spare those offenders who looked to be promising candidates for rehabilitation, were not opposed to punitive policies. All agreed that punishments inspired fear among the wicked, which enabled good citizens to live without fear. Good citizens were beneficiaries of the damage control that was necessary in a world where so many of Adam's offspring behaved criminally; the church and its faithful were beneficiaries.[25] Bishops would have been ill-advised to unequivocally oppose punishments, but a prelate's job was to spot opportunities to redeem miscreants, to preach repentance, and to work for personal rehabilitations. Augustine suggested to Macedonius that the church and civil magistrates could cooperate to realize what we might term "relative justice,"

[19] Augustine, *Confessiones* 5,6.10–5,7.13. Also see Augustine's sermons 232,2 and 252,4.

[20] *Imperatori Theodosiani Codex*, 16.5.40.

[21] Augustine, *De Genesi ad litteram* 1,21.41: qui calumniari Libris nobis salutis affectant.

[22] Augustine, *De civitate Dei* 2,21 and 5,15.

[23] Augustine, *Confessiones* 6,6.9.

[24] See Augustine, *De civitate Dei* 19,6; Augustine *Enarrationes in Psalmos* 51,1; and compare Robert Dodaro, *Christ and the Just Society in the Thought of Augustine* (Cambridge, UK: Cambridge University Press, 2008) 192.

[25] Augustine, epistle 153,16; Augustine, *De civitate Dei* 22,22.

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a return of stolen property, assuring the vicar that prelates were his allies on the issue of restitution. But that assurance was not the first step toward collaborations that might lead to a rehabilitation or evangelization of society.[26] Cruelty and villainy were too pervasive. For Augustine, the point of punishment was to bridle corrupt desire. Punitive measures could never obliterate it; Augustine's letter to Macedonius implies that corruption was current in the courts. Litigants bought special consideration. The court clerks received tips, which resembled bribes and which could be justified, Augustine allowed, if proceeds were shared with the poor. But money paid to judges, before or after verdicts were formulated, and to witnesses was unconscionable.[27]

Why not leave punishment to God who was above bribery? Although God may have seemed asleep to onlookers who saw that, in time, the unrighteous and shameless often went unpunished, the faithful believed that, in God's time, the inordinately acquisitive and arrogant would be punished everlastingly. In the interim, all citizens must learn to live with the secular courts' imperfections.[28] Augustine did have a court of his own. Constantine decreed that bishops preside as judges in assemblies or "audiences" to resolve disputes and, in effect, to punish losers, whose cases were unconvincing. Yet, as John Lamoreaux confirms, "generous provisions" that empowered prelatical magistrates were "scaled back" from the 370s by a few of Constantine's successors. Augustine still had jurisdiction to relieve the poverty of the unfairly dispossessed, change the fate of the illegally enslaved, and punish the unprincipled, yet he saw the causes brought by plaintiffs into his "audience" and the plaintiffs themselves as irritants.[29]

He groused that parishioners' complaints or "causes" were frequently unrelated to their faith and concerned secular business. True, the apostle Paul directed the faithful in Corinth not to take their squabbles to secular magistrates, but, Augustine

[26] Augustine, epistle 153,21-22. Von Heyking, "Augustine on Punishment," 56–57 is tempted to think that Augustine occasionally looked to political authority to induce [the] love of justice" as well as a fear of punishment; Breyfogle, "Punishment" 689 does not include "love of justice" as one of the "incidental benefits to the common good" that derive from punitive policy.

[27] Augustine, epistle 153,23–24.

[28] For punishment, in God's time, see Augustine, *Enarrationes in Psalmos* 77,39–41.

[29] For the irritation, see Paul Albert Février, "Discours d'Église et realité historique dans les nouvelles lettres de Saint Augustin," in *Lettres de Saint Augustin découvertes par Johannes Divjak* (ed. Johannes Divjak; Paris: Études Augustiniennes, 1983) 107. Jean-Marie Salamito (*Les virtuoses et la multitude: Aspects sociaux de la controverse entre Augustin et les pélagiens* [Grenoble: Millon, 2005] 240–41 and 299) and Claude Lepelley ("Augustin face à la christianisation de l'Afrique romaine: Le refus des illusions," in *Le problème de la christianisation du monde antique* [ed. Hervé Inglebert; Paris: Picard, 2010] 269–79, 273–74) refer to Augustine's opposition to pelagians' ascetic, "aristocratic . . . project of perfection" as well as his appreciation that Christianity was inclusive—or permixta—welcoming the disciplined and those in need of discipline. The inference is that he should have welcomed any opportunity his court or "audience" provided to judge, punish, and correct as well as to advocate clemency, for which, see Alain Houlou, "Droit penal" 22–23. Also see John C. Lamoreaux, "Episcopal Courts in Late Antiquity," *JECS* 3 (1995) 143–67, especially 146–49, for Constantine's "generous provisions" and the subsequent "scaling back."

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pointed out, the itinerant apostle never stayed in one place long enough to cope with the consequences—to adjudicate or arbitrate among querulous Christians. Centuries later, Christianity's bishops were uncomfortably aware of what followed from Paul's prohibition, especially after Constantine gave them courts—vexatious litigation.[30] Arguably, the most serious problem facing bishops presiding in their "audiences" was that their work as pastors was compromised by their work as magistrates. For when two parties clashed in court, each supposing that justice resided on its side, at least one would leave aggrieved and with a grudge against the judge. He was corrupt or, at best, imperceptive, litigious losers would say, impairing his ability to console and counsel.[31] Parishioners feeling cheated by the church court kept their distance from church. Bishops, Augustine reported, grew despondent; his colleagues' ministries were compromised.[32] But what Augustine once entertained as a viable alternative now seemed even more exhausting than bearing with litigants' self-righteousness. His objections to the rush to judgment in a case pending before a secular court, sometime after 409, argued that he, as go-between, could have resolved the dispute with friendly discussion (*amica disceptatione*). His shuttle diplomacy could have kept contending parties from court. If away from court, he expected they would be more reasonable.[33] Within courts, the faithful whined, ranted, and raged, even when the faithful were attempting to right palpable wrongs and punish wrongdoers.[34]

Determining disciplinary measures was a delicate matter when bishops were caught misbehaving. After pronouncing judgment on Antoninus, whom he had appointed bishop of Fussala, a diocese he carved from his own, Augustine was likely relieved to hear that he had been scratched from the list of judges hearing his nominee's appeals. Augustine presumed that, "until the end of time," churches would be led by officials seeking promotion for personal gain, yet he thought that Antoninus was cut from different cloth. He was wrong. Antoninus extorted funds and feathered his nest with what belonged to parishioners. Augustine found no compelling evidence of sexual misconduct, of which the thieving bishop of Fussala had been accused, so he dismissed those charges, yet he ordered Antoninus to give back property he had commandeered to build his new home. In effect, Augustine also deposed his appointee, instructing the residents to select a new bishop. But

[30] Augustine, *De opere monachorum*,37: tumultuosissimas perplexitates causarum alienarum pati de negotiis saecularibus.

[31] Augustine, *Enarrationes in Psalmos* 25,2.13.

[32] Augustine, epistle 48,1.

[33] Augustine, epistle 115,1.

[34] Augustine, *Enarrationes in Psalmos* 118,24.3. (But Augustine did not think it improper to appeal to magistrates to retrieve church property seized by Donatists [epistle 93,11]). Malefactors of various sorts surfaced in bishops' courts, and Augustine found himself rebuking colleagues who were reluctant to apply corporal punishment. The case in question involved a rapist apparently too reputable to receive a beating from secular authorities. For the opposition to corporal punishment, see Lamoreaux, "Episcopal Courts," 162, but also note the observation that bishops often ordered flogging (Augustine, epistle 133,2); for the rape, see Augustine, epistle 9*,2.

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Antoninus was permitted to retain quasi-episcopal jurisdiction over several estates, and that seemed to satisfy him until the consecration of his successor at Fussala was scheduled. Then, he appealed.[35]

Augustine was angry; Antoninus, he said, shamelessly packed his account of the episode that accompanied his appeal with lies.[36] Yet they prompted two successive bishops of Rome to order reviews of the original accusations and deliberations—reviews from which, as we learned, Augustine was excluded. We know nothing about the outcome. And we cannot tell what led to Antoninus's appointment and why Augustine let him salvage some authority. Possibly he was popular among his (and Augustine's) clerical colleagues. We can only infer from the tone and substance of Augustine's extended review of the affair that he regretted his appointment and especially his appointee's expropriations and antics. As for the relatively light punishment he initially imposed, Augustine appears to have feared that resorting to something more severe at the onset would have resulted in a round of recriminations, embarrassed the church, and given pagans and Donatists a scandal to spin to the disadvantage of catholic Christianity.[37]

Augustine generally did not hesitate to confirm the need to punish those pagans and Donatists when they became a threat to the social order in Africa. Historian Jill Harries contrasts Augustine with those Christians whose "principles were incompatible with . . . the secular usages of Rome" and with idealists who were unprepared "to cop[e] with the harsh realities of competitive church politics." For Harries, Augustine demonstrated "a measure of social acceptance" for the cruelty needed to rule, while applying "unrelenting pressure" to temper justice with mercy—and keeping magistrates "under constant scrutiny." "At no period in their history," Harries adds, did the Romans favor clemency for the condemned and spare the accused (and witnesses) torture, so she gives Augustine along with

[35] Augustine, epistle 20*. For the details and for Augustine's embarrassment, see Leslie Dossey, *Peasant and Empire in Christian North Africa* (Berkeley: University of California Press, 2010) 137–38 and Alexander Evers, *Church, Cities, and People: A Study of the Plebs in the Church and the Cities of Roman Africa in Late Antiquity* (Leuven: Peeters, 2010) 254-55. For Augustine's remarks on prelates' ambitions, *usque ad finem saeculi*, see epistle 208,2. Also, on that count, see Werner Eck, "Der Episkopat im spätantiken Afrika: Organisatorische Entwicklung, soziale Herkunft, und öffentliche Funktionen," *Historische Zeitschrift* 236 (1983) 265–95, 293–95.

[36] Augustine, epistle 20*, 11.

[37] Augustine, epistle 20*,26. Criticism of the appointment and of Augustine's reluctance to condemn Antoninus more emphatically at first almost certainly surfaced. Paul Février is sure (*sans doute*) that Augustine's narrative is his answer to critics ["Discours d'Église historique dans les nouvelles lettres de saint Augustin," in *Les lettres de saint Augustin découvertes par Johannes Divjak* (ed. Johannes Divjak; Paris: Études Augustiniennes, 1983). On Augustine's "leniency," also see Noel E. Lenski, "Evidence for the *Audientia episcopalis* in the New Letters of Augustine," in *Law, Society, and Authority in Late Antiquity* (ed. Ralph W. Mathisen; Oxford: Oxford University Press, 2001) 97].

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late antiquity's other Christian "realists" credit for having coped with the "harsh realities" of crime and punishment and for the little moderation she perceives.[38] But Christianity's civilizing influence, had it been widespread and conspicuous, would attract swarms of historians, one would imagine, and it has not. Still, there is no denying that Augustine had a few magistrates rethinking the severity of their sentences. He intervened to save Christian rioters at Calama, thirty miles from Hippo, but in another's diocese, from corporal punishment.[39] That said, however, as we have discovered, scholars who insist he posited a "complementarity" or an "essential continuity" between the secular and the celestial often emphasize a punishing rather than a pardoning Augustine, an Augustine whose *City of God* specifies that magistrates, who lawfully sentence criminals to death, were not only the law's and state's instruments but God's as well. And, although he did not make a habit of explicitly transforming government magistrates into the church's ministers and God's executors, he was to have sanctioned the former's use of "the sword" (*exserere gladium*) "to preserve public discipline."[40]

Some collateral effects were equally, if not more, desirable. Blows deterred, but they also instructed and corrected offenders who received them.[41] The latter two purposes could be termed therapeutic or "educative," John von Heyking says, citing the coercion that counters "the force of [bad] habit[s]" yet suggesting that Augustine appreciated the "evasive rhetoric of rehabilitation" often concealed in "a lust to punish" related to a lust to dominate that afflicted all in power. So he realized the need to set limits to coercion as well as the need for therapy in this unruly, wicked world. Augustine conceded, Charles Mathewes acknowledges, that "no realistic political psychology can do without" the fear that the force of punitive measures awakened.[42]

The impression that Augustine was fully engaged in magistrates' efforts to control and punish crime and in religious initiatives to temper punitive measures to ensure select criminals' rehabilitation appears to reinforce contemporary historical theologians' and ethicists' efforts to claim him as a social reformer. He appears to them to have been comprehensively interested in personal and social reconstruction—and in penology's place in such challenges. Eric Gregory writes about Augustine's admirable "civic liberalism." Claude Lepelley, acknowledging that Augustine would have preferred to preach away bad habits, features the prelate's anxious yet artful participation in discussions intended to establish tenants' rights

[38] Harries, *Law and Empire* 135–42, 150-52. For those "harsh realities," see Ammianus Marcellinus's account of punishments calculated to display government authority by piling one hardship upon another (consarcinare . . . aerumnas), *Rerum Gestarum* 28,1.10-13.

[39] Augustine, epistle 103,4.

[40] Augustine, sermon 302,16 and Augustine, *De civitate Dei* 1,21.

[41] Augustine, *De civitate Dei* 19,16.

[42] Von Heyking, "Augustine on Punishment" 61 and 69–70; Charles Mathewes, *The Republic of Grace: Augustine's Thoughts for Dark Times* (Grand Rapids, MI: Eerdmans, 2010) 49–51.

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without significantly eroding landlords' privileges.[43] Christoph Horn's Augustine is neither a political cynic nor a "holier-than-thou" (*heilsegoistischen*) escapist; to Horn, he was an activist struggling to cope with an ambiguous, if not impossible, task. Augustine, that is, believed that the world was as God wanted it—but he also believed that prelates should labor to change it. Slavery, for example, was fallout from multiple wars of conquest but was God's punishment as well; *donec transeat iniquitas*, until social inequalities were obsolete, the iniquitous domination of one human over another would continue, yet Augustine was resolved to present bondage as a calamity and an injustice that licensed neither masters' nor slavers' inhumanity.[44] Punishments, he said, were pervasive; "all life is punishment."[45] But what troubled him was that the course for secular or ecclesial judges, who allocated special sentences and torments in return for offenses and who, therefore, added to this life's "punishment" was never clear. At the end of the first decade of the fifth century, writing to friends, Augustine asked whether magistrates were simply making earth a more or less tolerable penal colony. Did it make sense to punish? Passages from sacred texts were not clear or consistent on the issue. To toss aside biblical directives to judge, rebuke, and punish seemed unconscionable, yet what was one to do with warnings in Matthew's gospel that we not judge (Matt 7:1)? And, Augustine continued, as if he regretted remarks making him seem to some eagerly engaged in civic life and penal reform, one could never tell if punishment would help offenders or sinners make progress. Official retribution might just as well fuel their anger and increase their offenses.[46]

Given the uncertainty, one understands why there is not enough in his correspondence or sermons—and certainly not in his *City of God*—to establish his consistent stake in penology or in law enforcement. And his doubts about punitive policy seem to undermine attempts to represent him as an "accommodationist," to borrow a term from James Smith, who also questions the term's application; Smith suggests—correctly, I think—that Augustine was ever mindful of the "mutually exclusive *teloi* of practices" that gave civic virtues and faith's demands "their identity-forming capacities." He knew he could not live by his ideals in the fourth and fifth centuries as if the kingdom of God had come. He was not what Smith

[43] Consult Claude Lepelley, "Saint Augustin et la voix des pauvres: Observations sur son action social en faveur des déshérités dans la région d'Hippone," in *Les Pères de l'Église et la voix des pauvres* (ed. Pascal-Grégoire; Grenoble: Association Histoire et Culture, 2006) 203–16, 211–13; Lepelley, "Augustin face à la christianisation de l'Afrique romaine" 272; and Eric Gregory, *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship* (Chicago: University of Chicago Press, 2008) 355.

[44] Horn, "Augustinus über politische Ethik" 51–52, commenting on Augustine, *De civitate Dei* 19,15, from which the quote is taken.

[45] Augustine, *De civitate, Dei* 21,14.

[46] Augustine, epistle 95,3-4.

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calls "antithetical," which is to say he was disinclined to condemn civic virtues. He lived strategically, acknowledging the divergence in the interests of the church and the government and allowing that the latter's imperfections were reflected in its punishments as well as in what was punished.[47]

Philosopher Rae Langton uses the distinction between living strategically and living by one's ideals to illustrate the predicament faced by Kantians. They may strive toward the ideals associated with the categorical imperative against lying, say, yet, with predators at the door and prey to protect, they are loath to live by those ideals. Doing so, they would become instruments of evil. Langton makes no mention of Augustine, but her brief for living strategically in worry-infested waters (and for deception) applies to his consideration of punitive measures; Augustine, we might say, strategically participated in initiatives twenty-first century readers would identify with social reconstruction, yet, as historian Miles Hollingsworth correctly infers, "advances that we associate with progress and development are resigned, by [Augustine], to the realm of the conventional rather than [that of] the foundational."[48]

To expect something more—to forge "essential continuities" and cobble together "complementary roles" connecting coercive civic authorities with the religious virtues that Augustine articulated—one would have to posit his intensive investment in the fate of "the conventional." In so much of what he preached and wrote, however, he explicitly denied that success at social reconstruction pleased God.[49] He accused Donatists of failing to observe the distinction between what mere creatures could do to mediate between God and humanity and what would-be infallible moral arbiters do to construct their societies of saints.[50] The African secessionists, much as pagan moralists, simply denied the persistence of sin. Sins steal upon us (*subrepunt*), Augustine insisted, during the normal course of life. Conventions or customs were riddled with them. No comprehensive social reconstruction, to which a sound penology would presumably have contributed, could have aligned the terrestrial cities with the celestial. Neither Donatists nor pagans had devised (or could devise) sufficient disciplinary measures to purge the sins that "never cease seeping into this world through our infirmities, as relentlessly as the waves of the sea." The strategy was to keep the ship afloat—*bonis operibus sentinate*, to order

[47] James K. A. Smith, "The Politics of Desire: Augustine's Political Phenomenology," in *Augustine and Postmodern Thought* (ed. L. Boeve, M. Lamberigts, and M. Wisse; Leuven: Peeters, 2009) 211–35, 217.

[48] Miles Hollingsworth, *The Pilgrim City: St Augustine of Hippo and his Innovation in Political Thought* (London: Clark, 2010) 155; Rae Langton, "Duty and Desolation," *Philosophy* 67 (1992) 481–505, at 501–503.

[49] For example, Augustine, *Enarrationes in Psalmos* 30.2,6.

[50] Augustine, *Vingt-six sermons* 26,44.

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all hands to pump out the bilges with their good works, but not to steer the ship of state, buffeted by rough seas to some secure harbor, well away from the waves of humanity's infirmities; no safe harbor in this wicked world existed.[51]

Agreeing with two correspondents at the end of the fifth century's first decade, Augustine conceded that "pumping out the bilges"—living strategically—required close association with and not a militant distrust of the world and the worldly who prescribe and enforce its punishments. The faithful must work with and among magistrates, he advised, because "unless one conforms somewhat" (*aliquantulum congruamus*) and participates in activities from which the Christians would draw their neighbors away, they can do nothing to help them. For Augustine, however, Christians' conscience prohibited them from being drawn too close, from making prosperity or social progress their principal aims.[52] The church and the faith's sacred literature, especially the psalms, Augustine believed, summoned Christians from short-lived satisfactions, teaching them what they ought to desire.[53] The danger was that adversity, prosperity, and political responsibility weighed Christians down (*praegravata*). They forgot that life was perpetual perishing and feared the "perishing" that punishment prompted—confiscation of their properties, forfeiture of their freedom, and occasionally loss of their lives.[54] Augustine reminded them that "love casts out fear," specifically, the fear of government punishments. Good behavior that derived from fear was, he continued, far inferior to the good motivated by the faithful's love of righteousness.[55]

Yet, as noted, Augustine considered fear and force useful. Prelates and ordinary people who were attracted to his "brand" of Christianity in Africa had to be protected from Donatists' alleged thuggish accomplices, the circumcellions. Pagan idolaters in Utica, Sufes, and Calama were known to have assaulted Christians of all stripes. In Sufes, dozens of Christians had been massacred in 399, after a statue of Hercules was defaced and toppled.[56] Bishops petitioned for and received rulings against the rioters, and Erika Hermanowicz has an intriguing take on their tactics. They asked

[51] Augustine, *Vingt-six sermons*, 56: Quae vero peccata per cottidianae vitae consuetudinem cottidie subrepunt, et quasi de maris fluctibus hujus saeculi per quandam nostram infirmitatem subintrare non cessant, bonis operibus sentinate, ne naufragium patiamini. The pagans, to whom Augustine referred, were no doubt moralists remaining faithful to the old cults rather than rustic idolaters. For the relatively new application of the term in the late fourth century, see the still valuable Émilienne Demougeot, *De l'unité a la division de l'empire romain, 395-410* (Paris: Adrien-Maisonnueve, 1951) 80–81.

[52] Augustine, epistle 95,2.

[53] Augustine, epistle 140,19: quid . . . exspectare, quid desiderare, quid poscere debeam.

[54] Augustine, *Enarrationes in Psalmos* 145,6.

[55] Augustine, epistle 140,53, quoting 1 John 4:18.

[56] Augustine, epistle 50.

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the imperial government to proclaim severe penalties, she suggests, only to lobby local officials "to mute prescribed sentences." So Christianity simultaneously labored to deter violence and win a reputation for clemency.[57]

Conjecture rather than evidence braces Hermanowicz's intriguing reading of the bishops' intentions. Augustine's explanations are more straightforward and uncontroversial. They help us to place his thinking about punishment in context. The first reason he gave for distancing church practice from capital punishment was that the blood of those who caused Christians pain stained their casualties—particularly, the faith's martyrs'—memories. So Augustine coached magistrates to resist retaliation that "shamed" the victims for whom they were exacting vengeance.[58] His second reason was more pragmatic. Severely punishing the faith's persecutors would probably prompt reprisals, so few of the faithful would risk offering testimony, which could put them in danger. Ironically, therefore, when punitive measures were severe, persecutors were not deterred from committing atrocities, but emboldened, because victims were reluctant to report them. The victims of harassment and more sinister forms of hostility were in a difficult spot. They had been instructed by the apostle Paul to overcome evil with good (Rom 12:21); if their accounts of atrocities led to the deaths of perpetrators, they would be acting contrary to that counsel and at great risk. Yet their silence inadvertently increased the risk to all the faithful, Augustine added, for when persecutors learned their crimes would go unreported, they grew all the more violent. Capital punishments, in other words, forced the faithful to choose to be killed by their enemies rather than to kill them through the courts.[59]

The church's bishops were responsible for making clear what distinguished faithful Christians from others. The former were, formally, citizens of the terrestrial city but, finally, citizens of the celestial city. Those bishops, too, were formally subjects of their emperors and servants of the reigning civic order. As such they advocated punitive policies and practices that maintained law and order. Their advocacy may make them appear responsible for the "essential continuity" between secular policies or civic order and the celestial or "eschatological" city, as Burnell and other historians and ethicists maintain. And the correspondence generated by the Calama crisis of 408 looks as if it put Augustine in just that position, because the question of punishing pagans surfaced soon after they set fire to the church and murdered a priest in that city, roughly thirty miles inland from Augustine's coastal see. Possidius, Augustine's first biographer and the bishop there, wanted government to assess punitive damages and travelled to Ravenna to have Emperor

[57] See Erika T. Hermanowicz, "Catholic Bishops and Appeals to the Imperial Court: A Legal Study of the Calama Riots in 408," *JECS* 12 (2004), 481–521, at 495 and 520.

[58] Augustine, epistle 134,3.

[59] Augustine, epistle 100,2.

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Honorius issue edicts to that effect. Calama's pagans approached a local celebrity, Nectarius, to solicit Augustine and to persuade him of their remorse and their willingness to pay compensatory damages but also to win his support for leaving matters at that. Those principally responsible for the riots feared corporal or even capital punishments. Moreover, they and others who participated wanted to avoid punitive damages that would leave them destitute. Augustine believed that the rioters' "astounding savagery," if left unpunished or punished negligibly, might encourage pagans elsewhere to act similarly and could leave Christians defenseless. He agreed to dissuade authorities from executions, speculating that poverty might induce the quality of repentance that would not only reconcile them to Christian neighbors but could conceivably draw them into Christians' churches.[60]

At this point, it may have occurred to Augustine that Christian bishops and government magistrates might collaborate to advance the purposes of each, to make more popular his once unpopular faith and to keep the peace, respectively.[61] But Augustine emphasized that he was profoundly disturbed by Nectarius's claim that civic piety and religious faith were distinct yet comparable and complementary "paths" to the same end.[62] Persons in public service might aim to reach the celestial city, Augustine conceded, yet they took the wrong road. He gauged that the very contention that secular service (necessary to sustain order with edicts and punishments) was somehow commensurate with "the obligations of love" incumbent on Christians leads misguided claimants deeper into exile.[63] As historian Ernst Dassmann noticed, early Christians turned their outcast status into a virtue; Augustine's insistence that the faithful were pilgrims on earth, exiled from their true

[60] Augustine, epistle 91,9. Nectarius was long thought to have been a pagan, and there is still substantial support for that view. See Brent D. Shaw, *Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine* (Cambridge, UK: Cambridge University Press, 2011) 252, but Hermanowicz, "Catholic Bishops" 497–98 suspects that he was "most likely a Christian." Eric Rebillard, *Christians and Their Many Identities in Late Antiquity, North Africa, 200–450 CE* (Ithaca, NY: Cornell University Press, 2012) 83–84, 92–95 argues that most Christians were seldom as consistently devout as their bishops expected them to be and suggests that Nectarius was "intermittent[ly]" a Christian. Perhaps that would correspond with the notion that he was also a "semi-pagan," for which see Emile Perreau-Saussine, "Heaven as a Political Theme in Augustine's *City of God*," in *Paradise in Antiquity* (ed. Markus Bockmuehl and Guy S. Stroumsa; Cambridge, UK: Cambridge University Press, 2010) 179. Whether Christian, pagan, semi-pagan, or something sui generis, Nectarius did hold a position quite contrary to Augustine's, that civic piety and Christianity were consistent, "complementary" paths to heaven, as Burnell indicated.

[61] See Robert Dodaro, "Augustine's Secular City," in *Augustine and His Critics* (ed. Dodaro and George Lawless; London: Routledge, 2000) 235–59. In "Patience and/or Politics: Augustine and the Crisis at Calama, 408–409," *Vigiliae Christianae* 57 (2003) 22–35, I take issue with Dodaro's interpretation but agree with him that colleagues who depict Augustine's position on punishment as a contemptible bid for Christianity's "political control" over the terrestrial cities are mistaken. For that assessment, consult William F. Connolly's *The Augustinian Imperative: The Politics of Morality* (Newbury Park, CA: Sage, 1993) 73–74 and 111–12.

[62] Augustine, epistle 104,12.

[63] Compare Augustine, epistle 104,13 (ab illa patria veritatis et beatitatis nos longe exsules mitteret) with Augustine, epistle 153,18-19.

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home, is a superb example of that transformation. "Faithful exiles on pilgrimage in this world roam far from [the celestial city], the memory of which stirs sadness and sighing." To be deeper into exile was to lose perspective, forget one's otherworldly status in this world, and become uncritical of it. Augustine warned against all this when he urged Christians, who were lumbered with secular responsibilities and, as magistrates, had to torture witnesses and accused, to do their duty while praying for deliverance from the same.[64]

Augustine, then, approved severity when it kept tensions from developing into religious conflicts. Unsurprisingly, he took special interest in deterring violence against Christians, so the obligations of love, for him, did not forbid corporal and capital punishment at every turn. When clemency, without risking the peace, plausibly served to repatriate them, or, as Michel Foucault wrote in his influential study of penology, "requalify them as citizens"—or, better still, to direct them into his faith, Augustine counseled mercy.[65] But his counsel, on this count, hardly suggests that he was ready to reconsider what he perceived as "radical discontinuit[ies]" between earthly justice and authentic justice, between the virtues of the faith's saints and the glory that derives from public service, and between noble Romans and Christian martyrs.[66]

That Augustine does not persistently condemn civic virtue has been taken to signal, in James Smith's terms, a "basically pro-imperial (and now pro-liberal or pro-democratic) stance emphasizing that Christians can be solidly engaged in the 'common' sphere of politics." Hence, as we learned, Augustine frequently has been cast as an "accommodationist" and meliorist who accepted the normativity of political values without giving up the possibility that they might be brought into line with religious values.[67] Casting of that sort bears comparison with Donatists' suggestions that heaven might be brought closer to earth in godly communities trying to resist contamination. Augustine maligned such ideas. He believed that communities "in this wicked world" were *permixta*; the godly and ungodly lived

[64] Augustine, *Enarrationes in Psalmos* 145,1 (Fideli homini et peregrinans in saeculo nulla est iucundior recordatio quam civitatis illius unde peregrinatur; sed recordatio civitatis in peregrinatione non est sine dolore atque suspiro.) Also see Augustine, *De civitate Dei* 19,6. For early Christians' outcast status, see Ernst Dassmann, "*Fuga Saeculi*: Aspekte frühchristlicher Kulturkritik bei Ambrosius und Augustinus," in *Weg der Theologie: An der Schwelle zum dritten Jahrtausend* (ed. Hans Waldenfels et al.; Paderborn: Bonifatius, 1996) 939–50, 941.

[65] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (trans. Alan Sheridan; New York: Random House, 1995) 130.

[66] Robert Dodaro, "Augustine's Revision of the Heroic Ideal," *Augustinian Studies* 36 (2005) 146–48 acknowledges that Augustine thought nothing of stressing these "radical" discontinuities as the Pelagian controversy progressed.

[67] Smith, "Politics of Desire," discusses—without endorsing—the image of Augustine as an "accommodationist." Among the best defenses of Augustine's willingness to accommodate, in part, and evangelize existing political norms, see Horn, "Augustinus über politische Ethik"; Gregory, *Politics and the Order of Love*; and Robert Dodaro, "*Ecclesia* and *Res Publica*: How Augustinian are Neo-Augustinian Politics?" in *Augustine and Postmodern Thought: A New Alliance against Modernity?* (ed. L. Boeve, M. Lamberigts, and M. Wisse; Leuven: Peeters, 2009) 237–71.

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and worked together until the end of time, and, for that reason, James Wetzel rightly proposes, Augustine was prepared to admit that even "a Christian regime [ought to] be expected to perpetuate the human tragedy of coercive justice, founded upon fear of retribution and infliction of punishment."[68] Mendacity (*mendacium*) and hypocrisy so gripped creatures that loved themselves first and loved their neighbors and God after, if at all, that many efforts at reclamation were doomed.[69] Punishment and a fear of force might bring a few hypocrites around, so to speak, but muscling out the sources of sin within on any grand scale and grounding "essential continuities" between the celestial and terrestrial—even in the ecclesial—was out of the question. Augustine suggested as much in a letter that historians and ethicists now use to prove his interventions in political punitive practice establish "essential continuities" and to register him alongside social reformers. The letter to magistrate Macedonius does indeed commend clemency—and for reasons we have already sketched—but it also protests that Augustine was unconcerned with the social consequences. He was replying to officials who feared that amnesties would lead to recidivism. Augustine insisted that social consequences did not and should not enter into bishops' calculations. Their objective was simply to set an example of tenderness, to exhibit the obligation of love that made the Word and their faith compelling on a stage dominated by self-love and retributive justice.[70]

[68] James Wetzel, "Snares of Truth: Augustine on Free Will and Predestination," in *Augustine and His Critics* (ed. Robert Dodaro and George Lawless; London: Routledge, 2000) 121–141, at 138. Also consult Ernest Fortin, "Political Idealism and Christianity in the Thought of Saint Augustine," in *Classical Christianity and the Political Order: Reflections on the Theologico-Political Problem* (ed. J. Brian Benestad; London: Rowman and Littlefield, 1996) 31–63, at 45–46.

[69] Augustine, *De civitate Dei* 14,4 and 19,24.

[70] Augustine, epistle 153,18: "commendatio mansuetudinis ad conciliandam dilectionem verbo veritatis."

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