

## LETTER 24\*

### *Introduction*

Closely linked in subject matter to *ep.* 10\*, letter 24\* also gives us valuable insight into the social state of the late empire. Augustine who, as a bishop in the Christian empire, is also empowered to act as a judge or arbitrator in civil cases and whose decisions will be legally binding, here seeks advice and counsel from a Christian layman, Eustochius, otherwise unknown, but obviously an expert in the civil law.

The authority of a Christian bishop to hear legal cases, the *episcopalis audientia*, was first established by the emperor Constantine in 318. Laws of the eastern emperor Arcadius in 398 and the western emperor Honorius in 408 further specified this power as one of arbitration. The role was not as precisely delineated as one might like. It lay somewhere beyond the ancient episcopal role of reconciler. People might seek such intervention in their legal problems in the hope that the decision would be honestly arrived at and that the procedure would be much less expensive than pursuing a case in the civil courts. But it meant greatly adding to the workload of the bishop as Augustine himself frequently complained. This would mean so much more to a man like Augustine who was already so much in demand to answer theological and exegetical questions and who had to travel frequently to episcopal gatherings. No doubt he also felt a certain twinge of conscience in dealing with issues like slavery according to the civil law when he should not be imposing the yoke of slavery on anyone according to the “apostolic discipline.” But, in civil cases, he was obliged to follow Roman law. Perhaps, as Février suggests, he wanted to know all the details of the civil legislation in the hope of finding loopholes for the Gospel.

As in *ep.* 10\* the increasingly rigid structures of the society of the late empire are illustrated in this letter. Issues like the status of the children of a free man and a slave woman, or of a free woman and a male slave, were fairly clear from the Roman law of earlier centuries, although in the latter case Augustine’s questions may have been understandable in the light of confusion about the application of the law. Since the recovery under the emperor Diocletian of the end of the tumultuous third century during which the empire had seemed threatened with disintegration, stability had been promoted at the expense of freedom and social mobility. There were increasing ef-

forts to force people to remain within the social and even occupational categories of their fathers. (The success of these efforts is another question.)

We may be shocked by the legal ability of parents to “lease” the labor of their children for up to 25 years, something we also saw in *ep.* 10\*. Here too some have gone beyond and sold their children outright into slavery. But it is the legal question of the children of the *coloni* or tenant farmers, workers on the large estates or plantations in North Africa, which brings this issue of what Lepelley calls the attempted “petrification of society” to special scrutiny.

Those who came to farm the land were originally free and not slaves. But amid the social trends of the fourth and fifth centuries, they were increasingly viewed as tied to the land they worked. They were not yet slaves but they were more and more considered as falling into a sort of intermediate state. Indeed they were embarked on the long process of being transformed into a proto-serfdom of the type we usually associate with the Middle Ages. Hence Augustine’s question: Can the tenant farmer father dispose of his son if both father and son are bound to the land of their estate and thus somehow come under the sway of the estate’s owner? Are these people being turned into slaves? Who would ever agree to such a process if it were made clear from the start? Roman law normally made the demarcation line between free and servile status very clear but here it was being blurred.<sup>1</sup>

The second section of this letter asks about a specific instance in which a free man has functioned as an *actor*, an agent or manager for the owner. This was in fact a function frequently performed by slaves. But Augustine asks, can that affect the free state of the functionary? Who would ever do it if that were the case? Eustochius is asked in particular to comment on certain laws which have been brought to Augustine’s attention. Unfortunately, we do not have his replies.

#### *Date*

Linking this letter with *ep.* 10\* which is dated early in the pontificate of Pope Celestine (422–432). J. Divjak argues that this letter should be dated a little before *ep.* 10\*. Février suggests that the two should be seen as contemporaneous.



AUGUSTINE SENDS GREETINGS in the Lord to the distinguished, deservedly honorable and dearest son, Eustochius:

1. D. Eibach, *Untersuchungen zum spätantiken Kolonat in der kaiserliche Gesetzgebung* (Bonn, 1980).

(1) Since you owe honest answers to all those who bring you questions, how much more do you owe such to us, the ministers of Christ, in whose faith you are a believer, in order to take hold of the heritage whose testament is the Gospel, most eminent Sir. Therefore, since the Apostle commanded that legal disputes in this world, if they take place among Christians, be settled not in court but in church,<sup>2</sup> there is a necessity for us to put up with wrangling over such issues.<sup>3</sup> There even earthly judgments are sought from us, especially concerning the temporal lot of men, because we are able, according to the apostolic discipline, to command slaves to be subject to their masters, but not to impose the yoke of slavery on free men.<sup>4</sup> With this in mind, I ask your most pure charity to be so kind as to instruct me what is to be observed concerning those who are born of a free woman and a male slave. For I am already aware that those born of a slave girl and a free man are slaves. What about those whose fathers sell their labor for a certain number of years? I would like to know whether, when the father who made the arrangement dies, they are required to fill out the same number of years or whether they are freed by the death of those by whom they were sold or perhaps I should say “leased,” since they begin to be legally independent themselves, as it is held. I would also like to know whether free fathers can sell their sons into perpetual servitude and whether mothers can sell their sons’ labor.<sup>5</sup> Similarly, I would like to know whether, if a tenant farmer sells his son, as it is allowed that (a son) be sold by his father, does the purchaser have more authority over the one who is sold than the owner of the whole estate where the tenant farmer comes from.<sup>6</sup> Is it lawful for the owner to make slaves of his tenant farmers or of their sons?

(2) (I would also like to know) what has been clearly established in jurisprudence or by laws concerning those who func-

2. cf. 1 Cor 6.4 f.

3. C. Lepelley, *Colloq.*, pp. 329–342.

4. cf. Tit 2.9.

5. M. Humbert, *Colloq.*, pp. 189–204.

6. On *coloni* and tenant farmers, see Jones, pp. 795–803.

tion as managers<sup>7</sup> for it seems to me to be most harshly prejudicial to the free-born state and its privileges. For usually free-born men are sought as managers, and they think that by accepting when they are sought, they are doing themselves a service. They are so convinced, in fact, that the one who sought it even gives thanks if he succeeds in obtaining it. But what is the benefit for the free man, if he is made a slave? In no way would he do such a thing if he knew this, but then neither would anyone dare ask this of a person who knew about it (beforehand).

Still I am moved by certain constitutions which have been brought to my attention, now that just such a question has been directed to us concerning the children of a certain person who perhaps will be shown to have been a manager. But I am unwilling to force the one who is contesting the matter to prove it unless I first know what I should do next, if perchance he does prove it. Hence I have sent these same constitutions to your excellency for consideration, two of which, I feel, speak to the matter, but, as for the others, either I do not understand them or they are not at all relevant to the question at hand. I, even though absent, ask you to help me, just as you always help me when I am present.

7. On estate management, cf. Jones, pp. 788–792.