Sold to Sin Through *Origo*:
Augustine of Hippo and the late Roman Slave Trade

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ABSTRACT

Toward the end of his life, Augustine of Hippo wrote two letters (10* abs 24*) to legal experts in which he reacted to recent attempts by slave-traders to sell 125 Roman North Africans 'overseas' as slaves. Prompted by the fact that members of his clergy had offered them refuge in the episcopal compound at Hippo, Augustine sought to clarify the actual personal legal status of these men, women and children. Were they slaves, *coloni*, or illegally captured free Roman citizens? What were their actual temporal, legal, personal conditions? Such concerns surrounding the *condicio hominum temporalis*, brought to light as a result of selling human beings, and their relevance and ramifications for Augustine's thoughts and actions, especially with regard to the sin to which we are sold *per originem* of the First Man, are the focus of my remarks.

On June 3, 1870, the steamship *Mars* of the Austrian Lloyd, operating out of Trieste, docked at Smyrna (today's Izmir) en route from Alexandria to Constantinople. Though Smyrna was a regularly scheduled halt, that day proved to be anything but routine: the British consul insisted on searching the *Mars* for slaves. The *Mars*' captain strenuously objected to such a search.[1] Though not a lawyer, he confidently quoted the Austrian penal code of 1852 to assure the British consul 'that there can be no slaves on an Austrian ship', because whoever set foot on Austrian soil or on board an Austrian ship became instantly free.[2] Indeed, Austria, like Britain and many other states had signed anti-slave trade conventions to which the Ottoman Empire also adhered, with a little noticed exception: all these conventions explicitly excluded the Mediterranean slave trade.[3] Thus, the eventual search of the *Mars* revealed among its passengers

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[1] Baron Gödel-Lannoy, President of the Maritime Administration in Trieste to the Austrian Foreign Minister in Viena, July 16, 1870, in *Haus –, Hof –, und Staatsarchiv*, Ministerium des Äusseren, Administrative Registratur, Fach 34, Sonderreihe 90, Handelspolitische Akten Rubrik 48: Sklavenhandel, Z. 2482/HP. The following relies on Alison Frank, 'The Children of the Desert and the Laws of the Sea; Austria, Great Britain, the Ottoman Empire, and the Mediterranean Slave Trade in the Nineteenth Century', *AHA* (2012), 410-44.

[2] *Strafgesetzbuch über Verbrechen, Vergehen und Übergehungen (27. Mai 1852), Neuntes Hauptstück*: Von öffentlicher Gewaltthätigkeit, § 95.

[3] Suzanne Miers, *Britain and the Ending of the Slave Trade* (New York, 1975), 82, 85.

several African women, children, and men carried to Constantinople for sale as slaves.

It is not my intention to discuss the contradictions of the anti-slavery conventions and the commercial relations between the Austrian Lloyd and the Ottoman Empire.[4] I cite this incident only to highlight two points that make the *Mars*'s captain's bold declaration that there were, legally, no slaves on his ship despite the *de facto* evidence to the contrary, so illuminating for my following remarks. The captain's certainty derived from the fact that unless presumptive slaves on board declared themselves as such and requested asylum, no one on board was considered a slave and hence no one could be freed.[5] Further, even if the passengers included *de facto* slaves, captains had no means of recognizing them, or so they claimed, since no external signs differentiated them from free persons: *Non posso conoscere se sono liberi servi o schiavi*.[6] Thus, the most the Austrian captain was willing to concede was that there might be passengers of 'unclear personal legal status' on board.[7] Consequently, hundreds of African children, women, and men boarded Austrian ships as slaves, were legally free while on board, and walked off the ships as slaves: neither slave nor free.

These interwoven themes, the slave trade and personal status, especially uncertain personal status brought into sharp relief as a consequence of selling humans, are the twin topics of the following discussion. However, since this discussion will focus on two sources composed by none other than Augustine of Hippo, I will conclude by bringing these twin themes into dialogue with some of his theoretical concepts.[8] The Augustinian concepts I have in mind are sin *per originem*, divine grace, human will, and I will address them in the context of the slave trade and personal status because Augustine did so himself.

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[4] Madeline Zilfi, *Women and Slavery in the Late Ottoman Empire: The Design of Difference* (Cambridge, 2010), 231 and passing; Ehud E. Toledano, *Slavery and Abolition in the Ottoman Middle East* (Seattle, 1998), 8.

[5] A. Frank, 'Children of the Desert' (2012), 439-40.

[6] Protocol of the interview of Giovanni Lombardini by the Direttore Navale Cav. Di Tappo, quoted in A. Frank, 'Children of the Desert' (2012), 426, n.61. Even though some of those children, women, and men wore flowing robes and metal bracelets and anklets, it was, allegedly, for a captain 'materially and morally impossible to examine them – first because I do not know the Arabic and Turkish language and second I cannot speak with them without risking a revolution on board of their coreligionists, because the Turkish religion does not allow men to speak with women'; Giovanni Felice Benich, *Protocollo assunto nella cancelleria del Consolato generale d'Austria-Ungheria in Smirne*, 29 July 1871, quoted in Frank, 433.

[7] 'In unklarer personenrechtlicher Position'; Walter Sauer, *Das afrikanische Wien. Ein Führer zu Bieber, Malangatana, Soliman* (Vienna 1996), 37.

[8] Aug., *Ep*. 10* and 24*; Johannes Divjak (ed.), *Œuvres de saint Augustin 46 B: Lettres 1*-29** (Paris, 1987), 166-83, 382-7, and 466-79, 547-53. The following is part of a larger project in preparation.

I

In 427 or 428 Augustine, bishop of Hippo Regius in Roman North Africa, wrote a letter to his friend Alypius, bishop of Thagaste, who was then in Rome en route to Ravenna where the Western Roman emperors resided. Augustine wrote to inform Alypius of recent events he considered so grave that they warranted imperial intervention.[9] A band of slave-traders and their catchers had rounded up free Roman citizens to sell them overseas as slaves. At the time Augustine had been away, only to find upon his return that members of his church had freed at least 120 of these captives. Many still lived in the episcopal precinct at Hippo.[10]

For Augustine, these actions and their consequences called for a change of existing law, and that was the purpose of his letter.[11] Alypius was the right man to lobby the imperial court for such a change. He and Augustine had gone from North Africa to Rome and Milan together to practice forensic rhetoric, and Alypius went on to become *assessor* to the court of the imperial fiscus, a highly prestigious legal position. Since their return to North Africa in the 380s, both men together had successfully lobbied for several imperial laws and rescripts. Hence, Augustine's confidence in Alypius' powers to sway the imperial court at Ravenna was well placed.[12] Sending a letter to Alypius was, however, not Augustine's only action. He wrote a second letter to another legal expert closer to home, a legal consultant called Eustochius.[13] Such consultants were usually charged just before a case was officially pleaded to examine all the facts in light of the available jurisprudence and imperial legislation, *ius et leges*.[14] The legal questions Augustine presented to that consultant are the same as those he raised in the letter to Alypius, so that both letters form a dossier. They suggest that Augustine was preparing at least one, probably two legal cases, both as advocate in his own defense and as judge in a related case. In short, these matters were serious.

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[9] Marie-François Berrouard, 'Un tournant dans la vie de l'église d'Afrique: les deux missions d'Alypius en Italie à la lumière des lettres 10*, 15*, 16*, 22*, 23*A de saint Augustin', *Revue des études augustiniennes et patristiques* 31 (1985), 46-70; the date originally suggested by Johannes Divjak (ed.), *Sancti Augustini opera. Epistolae ex duobus codicibus nuper in lucem prolatae*, CSEL 88 (Vienna, 1981), lviii, lxvi, was 422/423.

[10] Serge Lancel, *Sainte Augustin* (Paris, 1999), 213-6, for the identification of the church.

[11] Brent D. Shaw, 'Augustine and Men of Imperial Power', *Journal of Late Antiquity* 8 (2015), 32-61, 57.

[12] That is, with the *comes largitiorum Italicianarum*, Aug., *Conf*. VI 10.16; VIII 6.13; see Alypius 8, *PLRE* 1. 47; Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford, 2007), 85, 177; Detlef Liebs, *Römische Jurisprudenz in Africa. Mit Studien zu den pseudopaulinischen Sentenzen* (Berlin, 1993), 115-7.

[13] Aug., *Ep*.24* Divjak, CSEL 88, 126-7; Claude Lepelley, 'Liberté, colonat, et esclavage d'après la Lettre 24*: la jurisdiction épiscopale "de liberali causa"', in Johannes Divjak (ed.), *Les Lettres de saint Augustin decouvertes par Johannes Divjak* (Paris, 1983), 329-42.

[14] Aug., *Ep*. 24* 2.1: *sit iure vel legibus constitutum*, C. Humfress, *Orthodoxy* (2007), 73-4.

The letters in question are numbers 10* and 24* of the so-called Divjak letters, newly discovered in the 1980s.[15] Since then, *Letter* 10* concerning the slave trade has garnered a significant amount of scholarly attention. Every recent work on late Roman North Africa, the late Roman economy, slavery in late antiquity, the evolution of law in the later Roman Empire, or on Augustine as administrator, cites this letter, for good reasons. Augustine's description of the collusion between slave traders, their catchers and well-situated patrons in dragging men, women, and children across the Roman empire 'in columns, like an endless river (*perpetuo quasi fluvio*)' (*Ep.* 10*. 5), is the most detailed account we possess of the mechanics of the slave-trade in the Roman empire.[16] While scattered evidence of papyri, inscriptions, legal codes, and literary sources attests to the transport of slaves, bought and kidnapped, across the empire, no other source is as detailed in describing the organization of that particular trade. This fact alone alerts us to the enormous value of this letter.[17] Two main reasons account for the paucity of information about the ancient slave trade. The first is the utter disdain with which our elite ancient authors regarded those who traded in a merchandize they ravenously consumed and from which they profited, but did not write about.[18] The second is a collusion in modern historiography regarding slavery and the later Roman Empire. Because that empire was largely governed by Christians, scholars interested in Christian authors have in general assumed an ameliorating effect on slavery leading to its decrease. For others, beginning with Karl Marx and Max Weber, the period signifies the change from a slave (owning) society to its feudal successor, also characterized by a decrease in slavery and the rise of the so-called colonate. The specifics of that transition are one of the most central historiographic debates regarding the later Roman Empire on its way to post-Roman kingdoms.[19]

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[15] J. Divjak, *Sancti Augustini* (1981), 234; Claude Leppeley, 'Préface', in J. Divjak, *Les Lettres* (1983), 7-9; and Johannes Divjak, 'Zur Struktur augustinischer Briefkorpora (In memoriam Rudolphi Hanslik)', *ibid*. 13-27.

[16] Joachim Szidat, 'Zum Sklavenhandel in der Spätantike (Aug. epist. 10*)', *Historia* 34 (1985), 360-71; Kyle Harper, *Slavery in the Late Roman World AD 275-425* (Cambridge, 2011), 78-99; Cam Grey, 'Slavery in the Late Roman World', in Keith Bradley and Paul Cartledge (eds), *The Cambridge World History of Slavery* vol. 1 (Cambridge, 2011), 482-509.

[17] K. Harper, *Slavery* (2011), 78-99.

[18] J. Albert Harrill, 'The Vice of the Slave Dealers in Greco-Roman Society: The Use of a Topos in 1 Timothy 1:10', *JBL* 118 (1999), 97-122; Andrea Giardina, 'The Merchant', in *The Romans*, ed. A. Giardina (Chicago, 1993), 245-71; Heikki Solin, 'Zur Herkunft römischer Sklaven', in Heinz Heinen (ed.), *Menschenraub, Menschenhandel und Sklaverei in antiker und moderner Perspektive. Ergebnisse des Mitarbeitertreffens des Akademievorhabens Forschungen zur antiken Sklaverei* (Stuttgart, 2008), 99-130, esp. 112-30, focusing on the city of Rome; William V. Harris, 'Towards a Study of the Roman Slave Trade', in John H. D'Arms and E.C. Kopff (eds), *The Seaborne Commerce of Ancient Rome* (Rome, 1980), 117-40, remains the classic study.

[19] K. Harper, *Slavery* (2011), 3-24; Cam Grey, *Constructing Communities in the Late Roman Countryside* (Cambridge, 2011), 4-24, with further bibliography.

As a consequence of these debates, work on late antique slavery for its own sake is of recent vintage.[20] Further, there remains a divide between scholars engaged in the economic, social, and legal realities of late Roman slavery and other forms of bondage (historians) and those engaged in theoretical positions about divine justice and grace, free will, and enslavement to sin (theologians). *Letters* 10* and 24* fall right into the middle of this divide and address every one of the central issues at stake. They reveal that Augustine of Hippo engaged in the same set of questions, the human conditions of freedom and bondage, at the same time, from a legal, administrative, economic, pastoral and theological perspective. These are truly remarkable documents and deserve every citation they get. They also deserve to be read, however; something that has happened surprisingly rarely in the detail required.

II

Scholars have discussed *Letter* 10* as a straightforward description of an appalling incident – the illegal capture for sale of free Romans – that reveals Augustine's wish to come to the aid of those in need, but also shows his judicial role as bishop, illuminates his 'weak' position as administrator, powerless against local heavyweights,[21] and gives vivid proof of the purported decline of the Roman Empire's hold on North Africa (indeed, while these rivers of slaves flowed through Hippo Regius, the Vandals were moving South through Spain toward Gibraltar).[22] However, *Letter* 10* is a *commonitorium* or memorandum rather than a letter and this is an important distinction.[23] While letters were then

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[20] *E.g.* K. Harper*, Slavery* (2011); C. Grey, 'Slavery' (2011).

[21] Caroline Humfress, 'Bishops and Law Courts in Late Antiquity: How (not) to Make Sense of the Legal Evidence', *JECS* 19 (2011), 375-400; Noel Lenski, 'Evidence for the *Audientia Episcopalis* in the New Letters of Augustine', in Ralph Mathisen (ed.), *Law, Society and Authority in Late Antiquity* (Oxford, 2001), 83-97; Claudia Rapp, *Holy Bishops in Late Antiquity* (Berkeley, 2005), 242; Leslie Dossey, *Peasants and Empire in Christian North Africa* (Berkeley, 2010), 189-93; Jean Rougé, 'Escroquerie et brigandage en Afrique romaine au temps de saint Augustin (Ep. 8* and 10*)', in J. Divjak, *Les Lettres de saint Augustin* (1983), 177-88.

[22] Procop., *Wars* III 3.16-31; Prosper, *Chron.* AP 400 (= 427); Guy Halsall, *Barbarian Migrations and the Roman West 376-568* (Cambridge, 2007), 236-7, 239-42; Ralph Mathisen, 'Sigisvult the Patrician, Maximinus the Arian, and Political Stratagems in the Western Roman Empire ca. 425-440', *Early Medieval Europe* 8 (1999), 173-96, esp. 174-8, 189-91.

[23] Rita Lizzi Testa, 'Un "epistola" speciale: il commonitorio', in Franca E. Consolino (ed.), *Forme letterarie nella produzione latina di IV-V secolo* (Rome, 2003), 53-89; Mark Vessey, '*Opus imperfectum*: Augustine and his Readers, 426-435 A.D.', *VC* 52 (1998), 264-85; Serafino Prete, *Il commonitorium nella letteratura cristiana antica* (Bologna, 1962), 45, 58-64, argues against the *commonitorium* as discrete genre; Peter R.L. Brown, *Through the Eye of a Needle. Wealth, the Fall of Rome, and the Making of Christianity in the West, 350-550 AD* (Princeton, 2012), 382; for the public nature of letters see for example Jennifer V. Ebbeler, *Disciplining Christians. Correction and Community in Augustine's Letters* (Oxford, 2012), 20-3.

written for immediate publication, a *commonitorium* was a strictly private exchange between high officials, often addressing difficult and delicate matters, including confidential legal strategies and tactics. In this memorandum Augustine planned how Alypius should compel the imperial court to act – down to suggesting 'official' formulations. Far from providing a straightforward account, Augustine presented Alypius with case-studies related to the slave-raids selected so that they appealed to age old topics of good versus bad governance and illustrated his central legal concern. This central legal concern, contrary to the assumption of modern scholars, was not the capture and sale of free Roman citizens, but issues those raids brought into sharp relief: 'the temporal status of persons' (*de condicione hominum temporali*, *Ep*. 24*.1). This theme, the *condicio hominis*, or personal status, that is, the social and legal conditions acquired at birth and their consequences, is central to what follows.

427/428 are the dates now accepted for these letters rather than the earlier one of 422/423 Divjak had suggested, and the re-dating has consequences for Augustine and the slave trade not yet fully probed.[24] In 427 or 428, Alypius, rather than traveling to a court he knew well and had successfully lobbied for legal action before, was en route to a new court in trouble. In 423, a new emperor had acceded to the throne in the West, Valentinian III.[25] In 427/428, Valentinian was an eight year old child, who had recently arrived in Ravenna with his mother Galla Placidia. Earlier, in 410, Galla Placidia, a daughter of emperor Theodosius I, had been captured and enslaved when the Visigoths under Alaric sacked Rome. The Visigoths recognized her value and only released her six years later in exchange for settlement in Spain. In 427 and 428, Galla Placidia, now as Augusta to her child-emperor son in the West, was again in a tenuous position, because two leading military commanders were locked in a fatal battle for control of the court and the realm. One of them was the military leader of Africa, Bonifatius.[26] Embroiled in deep struggles with his rival, Bonifatius sought the military support of the Vandals, who had moved into Southern Spain. In 429 the Vandals crossed the Straits of Gibraltar. When Augustine died in 430, they were at the gates of Hippo Regius.[27] While

[24] J. Szidat, 'Zum Sklavenhandel' (1985), 360 for the earlier date; K. Harper, *Slavery* (2011), 93-4.

[25] Olympiodorus, *Fr*. 39.1-2; Hagith Sivan, *Galla Placidia: The Last Roman Empress* (Oxford, 2011), 60-72, 85-92; Meaghan A. McEvoy, *Child Emperor Rule in the Late Roman West, AD 367 – 455* (Oxford, 2013), 223-56, for a nuanced discussion of Valentinian III and Galla Placidia; Andrew Gillett, 'Rome, Ravenna and the Last Western Emperors', *Papers of the British School at Rome* 69 (2001), 131-67.

[26] Bonifatius was probably appointed military leader (*comes*) of Africa in 423; B. Shaw, 'Augustine' (2015), 50-5; see also Jeroen W.P. Wijnendaele, *The Last of the Romans: Bonifatius – Warlord and 'comes Africae'* (London, 2015), 54-78.

[27] Procopius, *Wars* III 3.15-31; Jordanes, *Getica* 33. 167; Eunapius, *Fr*. 62.1; Zosimus V 1.1-5; M. McEvoy, *Child Emperor Rule* (2013), 9-12, for a discussion of Galla Placidia's position and why it should not be equated with that of a regent even though it comes close, and 193-220;

Augustine wrote *Letters* 10* and 24*, however, the crossing of the Vandals into Africa was still a year or two in the future. Nevertheless, they made their presence felt. Since their arrival in Southern Spain in 425, they had disrupted the trade routes linking Africa to Constantinople and the West, forcing traders to move their wares to ports further East such as Hippo Regius. Those wares included slaves.[28]

Whatever the tensions and turmoil in Ravenna and in other parts of the Roman empire, in those years the Roman North African provinces, always prosperous and safe, experienced a veritable boom.[29] Together with Egypt and Sicily, North Africa was the bread basket of the empire.[30] Extensive port facilities, of which Hippo Regius was the second largest, allowed the Roman imperial government – the greatest trader – to export the produce from vast imperial and aristocratic estates, supplies for the army, and the grain, olive oil, and other food stuffs provided by the taxation in kind of Africa's lands and its inhabitants.[31] By the time of Augustine, a significant portion of the estates producing these riches were owned by the church. Hippo Regius was the second largest episcopal see after Carthage. In 411, the estates Augustine controlled were 20 times the size of his parental estate, and in 414, as a result of his and Alypius' successful lobbying of the imperial court, this size increased substantially.[32] Compared to the estates of the super-rich, these holdings were comparatively modest, but not insignificant. In sum, while the Western Roman emperor and his, or rather her court at Ravenna felt the pressures of the disintegrating realm, the provinces of Africa remained the economic engine of the West.[33]

G. Halsall, *Barbarian Migrations* (2007), 236-7, 239-42; H. Sivan, *Galla Placidia* (2011), 105-10; J. Wijnendaele, *The Last of the Romans* (2015), 87-96.

[28] K. Harper, *Slavery* (2011), 92-4.

[29] Jean Peyras, 'Le *Fundus aufidianus*: étude d'un grand domaine romain de la région de Mateur (Tunisie du Nord)', *Antiquités africaines* 9 (1975), 181-222; David Stone, 'Culture and Investment in the Rural Landscape: the North African *bonus agricola*', *Antiquités africaines* 29 (1998), 103-13, Brent D. Shaw, *Bringing in the Sheaves: Economy and Metaphor in the Roman World* (Toronto, 2013), 65-73.

[30] B.D. Shaw, *Sheaves* (2013), 9-56, 68-88; Brent D. Shaw, *Sacred Violence. African Christians and Sectarian Hatred in the Age of Augustine* (Cambridge, 2011), 30-66; L. Dossey, *Peasants* (2010), 11-27, 43-97; see also Michael I. Rostovtzeff, *The Social and Economic History of the Roman Empire* (Oxford 1926, 2nd ed. 1957), 275.

[31] Erika T. Hermanowicz, *Possidius of Calama: A Study of the North African Episcopate at the Time of Augustine* (Oxford, 2008), 120-8, 152.

[32] Aug. *Ep.* 126.5 and 7; P. Brown, *Through the Eye* (2012), 148-84, 325; Neil McLynn, 'Augustine's Roman Empire', *Augustinian Studies* 30 (1999), 29-44, esp. 34; *id*., 'Administrator: Augustine in his Diocese', in Mark Vessey (ed.), *A Companion to Augustine* (Oxford, 2012), 310-22.

[33] William E. Klingshirn, 'Cultural Geography: Roman North Africa', in M. Vessey, *A Companion to Augustine* (2012), 24-39; A.J. Boudewijn Sirks, *Food for Rom: The Legal Structure of the Transportation and Processing of Supplies for the Imperial Distribution in Rome and Constantinople* (Amsterdam, 1991), 1-36 and *passim*.

III

Given this context, what caused Augustine such enormous concern? *Letter* 10*, the private memorandum, falls into two parts, of which only the second addresses the slave raids and their effect. Augustine opened *Letter* 10* by thanking Alypius for sending him a work by a certain Caelestius and the most recent books Julian of Eclanum had written to Florus, and confirmed that he was already rebutting them, a task for which he had put the *Retractationes* on hold.[34] The rebuttal in question is the *Incomplete Work Against Julian*, in which Augustine presented the most mature account of his positions on divine grace, human free will, and the sin to which we have been sold *per originem* of the first man.[35] At stake was the condition of man at birth: had the sin of Adam been handed down to all mankind, *tradux peccati*, and affected even babies, thus born as slaves to sin, or did sinning require an act of will, so that it was inconceivable that a new born, as yet without volition, should be guilty of a sin committed a long time ago?[36]

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[34] M.-F. Berrouard re-dated *Letter* 10* by pointing out that sometime after *Letter* 10* Augustine wrote *Letter* 224 to Quodvultdeus informing him that Alypius in Rome had been able to obtain the first five of the projected eight books Julian of Eclanum was writing against him and he assured Quodvultdeus that he was already rebutting Julian; indeed, this rebuttal was so pressing that he had to put all else, including the *Retractationes*, on hold. He had already finished responding to the first three books and was just honing in on book four; Aug., *Ep*. 224.2, CSEL 57, 452; Aug., *Contra Iul. Op. imp*. I 1, CSEL 85/1, 5. Karla Pollmann, 'Alium sub meo nomine: Augustine between His Own Self-Fashioning and His Later Reception', *ZAC* 14 (2010), 409-22, esp. 412-7; Julian's *Ad Florum* dates between 422 and 426, and Augustine's response remained incomplete; M.-F. Berrouard, 'Un tournant' (1985), 63-70; Josef Lössl, *Julian von Aeclanum. Studien zu seinem Leben, seinem Werk, seiner Lehre und ihrer Überlieferung* (Leiden, 2001), 6-8, 105-46.

[35] Aug., *De pecc. merit*. I 23.33, CSEL 60, 33: *Unde redimit, si non sunt per originem primi hominis venumdati sub peccato*? From where did he repurchase/redeem us, if we are not put up for sale under sin through the origo of the fist man?; Aug., *Contra Iulianum Opus Imperfectum*, CSEL 85/1-2 (Vienna, 1974, 2004); Peter R.L. Brown, *Augustine of Hippo. A Biography* (Berkeley, 1967, 2000), 383-99; Donato Ogliari, Gratia et certamen*: The Relationship between Grace and Free Will in the Discussion of Augustine with the So-called Semipelagians* (Leuven, 2003), 239-65; Mathijs Lamberigts, 'Julian of Aeclanum on Grace: Some Considerations', *SP* 7 (1993), 341-9.

[36] The scholarly reception of the *Opus Imperfectum* has been mixed. James J. O'Donnell, *Augustine. A New Biography* (New York, 2006), 296-303, calls it dispiriting at 283, but finds redeeming value at 309; Gerald Bonner, *Freedom and Necessity: St. Augustine's Teachings on Divine Power and Human Necessity* (Washington, DC, 2007), 17 is also not entirely in favor; Pier Franco Beatrice, *The Transmission of Sin. Augustine and the Pre-Augustinian Sources*. Trans. Adam Kamesar (Oxford, 2013), 15-57; Jirzinho Lopes Pereira, *Augustine of Hippo and Martin Luther on Original Sin and Justification of the Sinner* (Göttingen, 2013), 164-75; Jesse Couenhoven, *Agency, Necessity, and Culpability in Augustinian Theology* (Oxford, 2013), 19-23; Gerald Bonner, 'Les origines africaines de la doctrine augustinienne sur la chute et le péché originel', *Augustinus* 12 (1967), 97-116.

It was a debate that led Elizabeth A. Clark to observe: 'I doubt that at any time before or after ... were a group of celibate men so concerned with babies.'[37] Clark is not certain 'whether they were discussing 'babies-in-theory', or 'flesh and blood babies', but my inclination is toward the latter. First, it is important to recall that birth in the Roman Empire consisted of two intertwined processes: the natural process of birth, *natus*, and the social, legal, and economic *condiciones* associated with birth, denoted by the term *origo*, which assigned the new-born her place in the *ordo* of the empire.[38] Accordingly, for Augustine, too, to quote Andrea Nightingale, 'the human being is psychosomatic *and* socially defined.'[39] Moreover, for the later Augustine, this human body, united in sweet marriage to the soul, had become increasingly important, because here the operation of the work of salvation could be observed most clearly.[40]

As is well known, Augustine's views had evolved over the years in intense debates with his rivals, first his Manichean former friends and teachers, such as Fortunatus, and later Pelagius and his followers, above all Julian of Eclanum.[41] At stake were, most significantly for my purpose here, the implications and consequences of Adam's sin. All agreed that Adam had sinned, that he had been punished, and that both sin and punishment had been consequential for mankind. But what exactly had been the nature of that sin, and how heavy a punishment should a just God impose on his creation? Only mortality, or more? To what degree did Adam's sin condition each person's response to sin and hence man's volition? Did God truly punish mankind collectively for eating a piece of fruit – that, as Julian pointed out, had after all been the extent of the crime – or individually by creating in each person a tendency toward sinning,

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[37] Elisabeth A. Clark, *The Origenist Controversy: The Cultural Construction of An Early Christian Debate* (Princeton, 1992), 194.

[38] Cam Grey, 'Contextualizing *Colonatus*: the *Origo* of the Late Roman Empire', *JRS* 97 (2007), 155-75; C. Grey, *Constructing Communities* (2011), 181-97; A.J. Boudewijn Sirks, 'The Colonate in Justinian's Reign,' *JRS* 98 (2008), 120-43; Dieter Nörr, '*Origo:* Studien zur Orts-, Stadt,- und Reichszugehörigkeit in der Antike', *Tijdschrift voor Rechtsgeschiedenis* 31 (1963), 525-600; Anne-Isabelle Bouton-Touboulic, *L'ordre caché: la notion d'ordre chez Saint Augustin* (Paris, 2004).

[39] Andrea Nightingale, *Once out of Nature. Augustine on Time and the Body* (Chicago, 2011), 107-20, quote 116, emphasis mine; Paula Fredrikson, 'Vile Bodies: Paul and Augustine on the Resurrection of the Flesh', in Mark S. Burrows and Paul Rorem (eds), *Biblical Hermeneutics in Historical Perspective* (Grand Rapids, 1991), 75-87.

[40] Aug., *Ep*.140.6.16; *De doctrina Christiana* I 24.24-6; *Civ. Dei* XXII 19-22; *Gen.litt*. III 21, 33; IX 3.5-11; for Julian's rather similar views see J. Lössl, *Julian (*2001), 135; David G. Hunter, 'Augustine on Bodies', in M. Vessey, A *Companion to Augustine* (2012), 353-64, esp. 354-7; John M. Rist, *Augustine: Ancient Thought Baptized* (Cambridge, 1994), 111-2; Patricia Cox Miller, *Corporeal Imagination. Signifying the Holy in Late Ancient Christianity* (Philadelphia, 2009), 102-4.

[41] Jason D. BeDuhn, *Augustine's Manichean Dilemma 2: Making a 'Catholic' Self, 388-401 C.E.* (Philadelphia, 2013), 122-63; Pierre-Marie Hombert, Gloria gratiae: *Se glorifier en Dieu, principe et fin de la théologie augustinienne de la grâce (*Paris, 1996), 159-97, 253-84.

and was that tendency inevitable or could it be controlled by human reason?[42]
If the punishment for Adam's sin, understood as a fateful act of disobedience
*vis-a-vi*s an omnipotent *dominus et deus*, was collective, passed on through
parentage, and further augmented through the accumulation of individual sin
throughout one's life, what did that say about God's justice and man's choice?
[43] But before delving further into these questions, it is opportune to return to
the second part of Augustine's *Letter* 10*: the 120 Roman citizens captured to
be sold as slaves overseas.

Confronted by this outrage, Augustine instructed Alypius to get the court to
amend a law already on the books, a copy of which he appended to his letter.[44]
This law (we no longer possess) had been addressed to the governor of Africa
and prescribed draconian punishments for merchants who sold *mancipia*,
slaves, overseas.[45] Augustine wanted the law to be expanded to punish also
merchants who sold free persons, Roman citizens, overseas as slaves. This request
makes no sense. The kidnapping, capture, and sale of free Roman citizens had
always been a crime, *plagium*, with sufficiently draconic punishments firmly
in place. No amendment was necessary.[46] Likewise, it is not clear why the sale
of slaves by traders overseas should be illegal; slaves after all were by defini-
tion for sale. Hence, already these first sentences should alert us that this letter
concerns neither the sale of free Roman citizens nor that of actual slaves.

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[42] Jul., *Flor.* in Aug., *OpImp*. VI 23.

[43] Aug., *Op. Imp*. III 7, CSEL 85/1, 354; For discussions see, among many others, J. Pereira,
Original Sin (2013), 51-80, 147-201; D. Ogliari, *Gratia et certamen* (2003), 262-5; E.A. Clark,
The Origenist Controversy (1992), 237-43; P.F. Beatrice, *Transmission* (2013), 15-37; Malcolm
Aflatt, 'The Responsibility for Involuntary Sin in Saint Augustine,' *Recherches Augustiniennes*
10 (1975), 171-86; Alister McGrath, 'Divine Justice and Divine Equity in the Controversy
between Augustine and Julian of Eclanum', *Downside Review* 101 (1983), 312-9.

[44] Neither the law nor the addendum has been preserved.

[45] Aug., *Ep*.10*. 3.5: *quod incomparabiliter longe minus fuit, quando tamen imperator Hon-
orius ad praefectum Hadrianum legem dedit huiusmodi cohibens mercaturas talosque impietatis
negotiatores plumbo cohercendos et proscribendos et in exilium perpetuum censuit esse mitten-
dos*; Claude Leppeley, 'La crise de l'Afrique romaine au debut du Ve siècle d'après les lettres
nouvellement découvertes de saint Augustin', *Comptes rendues des séances de l'Académie des
Belles Lettres* 125 (1981), 445-63, 459; J. Szidat, 'Zum Sklavenhandel' (1985), 362-5; Leslie
Dossey, 'Judicial Violence in the Ecclesiastical Courts in Late Antique North Africa', in Ralph
Mathisen (ed.), *Law, Society, and Authority in Late Antiquity* (Oxford, 2001), 98-114, esp. 99-100.

[46] Since Ulpian *plagium* as a consequence of the *lex Fabia de plagio* was considered a *crimen
capitale*, confirmed by Diocletian, but modified by Constantine, Ulp. *Dig*. 48.15.1; Coll. 14.3.3;
CJ 3.15.2, 7.14.12, and 9.20.7. The *Pauli sententiae* 5.6.14 and 5.30b decree exile and loss of half
their property for *honestiores* and crucifixion or the mines for *humiliores* convicted of *plagium*;
Alfred Söllner, *Corpus der römischen Rechtsquellen zur antiken Sklaverei 9: Irrtümlich als Sklaven
gehaltene feie Menschen und Sklaven in unsicheren Eigentumsverhältnissen* (Stuttgart, 2000), 24,
117-8, 121, 128; Oliver Schipp, 'Der Raub freier Menschen in der Spätantike', in H. Heinen, *Men-
schenraub* (2008), 157-82; Inge Kroppenberg, 'Wirtschaftshistorische Aspekte des *plagium* von
der späten Republik bis Konstantin', *ibid*. 131-56, esp. 152-6.

Those earlier scholars who noted the conundrum explained it with Augustine's lacking comprehension of Roman law. Recent scholarship is unanimous in attesting Augustine instead a very high degree of legal competence.[47] Roman law is indeed at the root of the conundrum. As Nicholas Purcell has recently re-emphasized, societies are deeply formed by what it is that they can sell and what is excluded from commercial transactions. In the Roman Empire, certain human beings were for sale while others were inalienable. The dividing line was drawn at birth. Status, or *condicio* at birth, unalterable by any other means, divided slave and free. By law, no freeborn person could be sold, sell himself, or his freeborn children: free born persons were inalienable forever. In this, all Roman legal theorists and all other authors concurred. All other human bodies were commodities for sale.[48] Roman theorists, legal and otherwise, thus agreed that slavery was essentially a question of tough luck: a consequence of birth and parentage, or *origo*, quite divorced from the merit of the human being concerned.[49] Once born as a slave one was utterly dependent on the master's whim, and whether the master, *dominus*, was benevolent or cruel was independent of a slave's personal merit, though prompt obedience was always advisable. Such complete and utter dependence on another person's grace had repercussions. All agreed that, irrespective of birth, the condition of enslavement, even if temporary, for example because of captivity in war, left an indelible mark, the *macula servitutis*.[50] This stain of slavery was, however, not necessarily external and visible. Hence, 'it is difficult to distinguish a free man from a slave (*difficile dignosci potest liber homo a servo*)' – the words of the Lloyd's captain anticipated in the *Digest* 18.1.5.

In fact, the picture of slavery in later Roman Empire was highly complex: the clear positions of the Roman law, positing and preserving the deep divide through birth between bodies as property and free human beings, was always

[47] C. Humfress, *Orthodoxy* (2007), 73-4, 144-52, 168, 189-94; C. Lepelley, 'Liberté' (1983), in J. Divjak, *Les Lettres*, 329-42; Eva-Maria Kuhn, 'Rechtsprechung durch den Bischofsrichter Augustin und die Umsetzung der göttlichen Gerechtigkeit in der Praxis', in Johannes Hellebrand (ed.), *Augustinus als Richter* (Würzburg, 2009), 106-55, esp. 125-35.

[48] Gaius Inst. I 9: *omnes homines aut liberi sunt aut servi*; *Cod.Ius*. IV 43.1; Dig. 40.12.7; Jane F. Gardner, 'Slavery and Roman Law', in K. Bradley, *Slavery* (2011), 414-37, esp. 414-26; C. Grey, 'Slavery', *ibid*. 482-6; Nicholas Purcell, unpublished Sather Lectures (Berkeley, 2012); Marta Garcia Morcillo, *Las ventas por subasta en el mundo romano: la esfera privada* (Barcelona, 2005), 14-5; Elisabeth Herrmann-Otto, 'Die Bedeutung der antiken Sklaverei für die Menschenrechte', in Elisabeth Herrmann-Otto (ed.), *Unfreie Arbeits-und Lebensverhältnisse von der Antike bis zur Gegenwart* (Stuttgart, 2005), 66-74; Charles W. Smith, *Auctions: the Social Construction of Value* (Berkeley, 1990).

[49] *E.g.* Cic., *Par. Stoic*. V 33-34: *infima condicio et fortuna*; Sen. Mai., *Contr*. VII 6.15: *dixit neminem natura liberum esse, neminem servum; haec postea nomina singulis inposuisse Fortuna*; Peter Garnsey, *Thinking about Property from Antiquity to the Age of Revolution* (Cambridge, 2007), 72-6, 84-98.

[50] *Digest* 40.11.5; *Cod. Iust*. VII 16.9; X 32.2; Henrik Mouritzen, *The Freedman in the Roman World* (Cambridge, 2011), 10-35.

confronted with a reality in which this divide was crossed and re-crossed. Slaves could be wealthy and own slaves of their own. Freeborn persons could be sold and did sell themselves, or could become captives, imperial princesses included. Further, by the time of Augustine, as a consequence of changes in the tax-law under Diocletian, a great number of persons lived in a grey zone, in hybrid states as neither true slaves nor really free.[51] Among those were the persons for whom Augustine sought a change in imperial legislation, not least, because incidents such as the slave raids brought into focus the dire consequences of such status uncertainty. These were persons known as *coloni originarii* or *originali*, tenant farmers tied to the land through their birth, or *origo*, for the purpose of taxation, since they produced the revenue of the land assessed.[52] What exactly was their status? Were they free or, since they were bound to the land from which they originated, slaves? The traders and their powerful patrons considered them bound, since they demanded that Augustine compensate them for merchandize members of his church had illegally seized. Augustine did not agree; he stressed their free-born status.[53] Hence, it was imperative for him to seek imperial clarification as to what exactly the status of such persons was, since much depended on it. Had the traders committed kidnapping, theft, or nothing illegal at all?

IV

Augustine begins with a brief mention of the captured free Roman citizens to whom he returns at the end of his letter. Immediately thereafter, he states that among those now freed were *veri servi*, 'true slaves', whose capture was illegal. They posed no legal problem, because if not sold by their owners they were merely the object of theft. Then he mentions 'five or six children who had been sold by their parents'. Such transactions were legal, but for Augustine the dire fate of these small children was a pressing concern. '[The traders] do not buy these [children], as the laws of Rome allow, for work lasting 25 years, but they buy them precisely as slaves and sell them overseas as slaves, *ut servi*.'[54]

[51] C. Grey, 'Slavery' (2011), 487-93; Jaques Ramin and Marie-Paul Veyne, 'Droit romain et société: les homes libres qui passent pour esclaves et l'esclavage volontaire', *Historia* 30 (1981), 472-97, here 475, 488-90; Jennifer Glancy, *Slavery in Early Christianity* (Oxford, 2002), 71-101, addresses the fluidity of slavery in the New Testament context.

[52] C. Grey, 'Contextualizing *Colonatus*' (2007), 155-75; L. Dossey, *Peasants* (2010), 136-44; Jean-Michel Carrié, 'Dioclétien et la fiscalité', *Antiquité tardive* 2 (1994), 33-64; *id*., 'Le 'colonat du Bas-empire': un mythe historiographique?' *Opus* 1 (1982), 351-70.

[53] L. Dossey, *Peasants* (2010), 189-91.

[54] Aug., *Ep.* 10*. 2: *tanta est eorum qui vulgo mangones vocantur in Africa multitudo, ut eam ex magna parte humano genere exhauriant transferendo quos mercantur in provincias transmarinas et paene ones liberos. Nam vix pauci reperiuntur a parentibus venditi quos tamen non, ut leges Romanae sinunt, <ad> operas viginti quinque annorum emunt isti, sed prorsus sic*

Augustine then alerts Alypius to a woman sold by her husband even though she had no evident flaws. The husband, who was quite well off, was a '*colonus* of our church'. Augustine submitted the same cases in his second *Letter* 24* to the legal consultant Eustochius.[55] In sum, Augustine's letters focus on several sets of persons whose status fell into a grey zone 'in between', neither fully free nor truly enslaved.[56]

As far as the children were concerned, by law freeborn children could not be sold. However, as Augustine was fully aware, the sale of their labor for 25 years was permitted.[57] This raised questions of ownership and possession that required clarification. Who owned what, and whose claims took precedence? The *potestas* of the father or the dominion of the person who had bought the labor, but not the child? Augustine was of the opinion that he who bought the labor of such a child had not acquired the rights inherent in the position of *dominus*, or slave owner: such rental or apprenticeship agreements did not diminish the father's *patria potestas* (*Epp*. 10*. 2 and 24*. 2). The child's freeborn status remained intact. However, during the 25 year period during which their labor was rented out, these children were not free. They lived *ut servi*, as slaves without being *veri servi*, true slaves. Were they to be sold overseas, moreover, they would be caught, illegally, in *servitus perpetua* (*Ep*. 24*.1.3.6). Displacement, not sale, changed their status as persons, not legally but in fact.[58]

Second, the tenant or *colonus* of the church, who had sold his wife: could a *colonus* sell his wife, or, as Augustine asked in *Letter* 24*.1, his children? As *Letters* 10* and 24* make clear, *coloni* were born free, which in theory meant that they could not be sold nor sell their free-born children. However, as Augustine's inquiry makes abundantly clear, these *coloni* were not entirely free, since,

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emunt ut servos et vendunt trans mare ut servos; veros autem servos a dominis omnino rarissime; and see Aug., *Ep*. 10*. 7.

[55] Aug., *Ep*. 10*.6: *Quis credat ecclesiae nostrae colonum satis idoneum uxorem suam eandemque matrem filiorum suorum nulla culpa eius offensum solo excitatum feruore huius pestilentiae vendidisse?* Aug., *Ep*. 24*. 1: *item quaero utrum, si colonus vendiderit filium, quemadmodum licet ut <filius> vendatur a patre, plus in illo qui venditur iuris habeat emptor quam possessionis dominus, unde colonus originem trahit, et utrum liceat oissessori servos facere colonos vel filios colonorum suorum.*

[56] H. Mouritzen, *Freedmen* (2011), 66-119; C. Grey, 'Slavery' (2011), 502-6.

[57] Ville Vuolanto, 'Selling a Freeborn Child: Rhetoric and Social Reality in the Late Roman World', *Ancient Society* 33 (2003), 169-207, 170-1. For further analysis see Noel Lenski, 'Constantine and Slavery: Libertas and the Fusion of Roman and Christian Values', *Atti del'Academia Romanistica Costantiniana* 19 (2012), 235-60, esp. 257-8; William W. Buckland, *The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian* (Cambridge, 1908, repr. 1970), 427; Hans Langenfeld, *Christianisierungspolitik und Sklavengesetzgebung der römischen Kaiser von Konstantin bis Theodosius II* (Bonn, 1977), 115-27.

[58] Other cases of uncertain status mentioned in the two letters I discuss elsewhere include a *calculator notarius* from a monastery and an *auctor*; *Cod. Theod.* XII 1.92 = *Cod. Iust.* X 32.34; *Nov. Theod.* IX 1.1. (439); C. Grey, *Constructing Communties* (2011), 141.

through their *origo*, they were bound to the land: *coloni originali*. In the eyes of many, the evident consequence of such bondage was that they and their children were for sale. But if so, asks Augustine, by whom? Could a *colonus* sell his wife and child, or was that the prerogative of the owner of the land to which the *colonus* was bound (*unde colonus originem trahit*, *Ep*. 24*.1)? And if they could be sold by the owner, then in what capacity? As *possessor*, owner of the land, or a as *dominus*, owner of a slave? Moreover, the *colonus* of *Letter* 10*, who sold his wife, belonged to the church. Who owned the estates of the church? Elsewhere, Augustine stated that the owner, or *dominus*, of everything was God, but that Augustine, as bishop, was God's *procurator*, the top managerial slave of God, who supervised and indeed 'owned' God's slaves.[59] Thus in fact the *dominus* in question with regard to the *colonus* and his wife was Augustine.

With this Augustine returned again to the freeborn Roman citizens whose capture had so enraged him: none other than such *coloni*.[60] Augustine, shaping a legal argument for a court governed by an empress who had been enslaved as a free Roman citizen, stresses that they were free-born Roman citizens. However, it is clear that they were free yet bound, and hence legally in limbo: Roman law did not have any category in which to capture the real situation of these persons. And yet, these were the men, women, and children, whose brutally hard labor fed the empire. They, through taxation in kind, filled the bread-baskets of Rome, which is why they had been bound to the land in the first place. This land included the estates of the church. However, their legal limbo, as Augustine makes crystal clear, made them vulnerable precisely to events such as the one now preoccupying him, Eustochius and Alypius. Had they been truly freeborn, the traders would have committed *plagium*. Were they *true* slaves, their sale overseas would be prohibited, because the law Augustine wanted to be extended to cover these *coloni* prohibited the sale of true agricultural slaves, *mancipia originaria*, bound *per originem* to the land. Hence, the draconian punishments for traders selling such slaves overseas: they participated in tax evasion.[61]

Legal clarification on the part of the emperor was hence crucial and Augustine and Alypius had every reason to demand it. Indeed, an earlier law addressed to Gaul, described *coloni* as *servi terrae*, slaves of the land – but that law too skirted the issue: though free they were classified in analogy to slaves, something the law categorically prohibited.[62] The legal status of *coloni* or tenants

[59] Aug., *Ep*. 126.9; *Ep*. 185.9; Peter Garnsey, *Ideas of Slavery from Aristotle to Augustine* (Cambridge, 1996), 231-5.

[60] O. Schipp, 'Der Raub freier Menschen', in H. Heinen, *Menschenraub* (2008), 157-82.

[61] *Cod. Theod*. XI 3.2; VII 1.3; *Cod. Iust*. XI 48.7; J. Szidat, 'Sklavenhandel' (1985), 363-4; C. Grey, *Constructing Communities* (2011), 181-97; J. Rougé, 'Escroquerie' (1983), 184-5.

[62] *Cod. Iust*. XI 52.1: *Et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur*; K. Harper, Slavery (2011), 153-7; C. Grey, 'Contextualizing *colonatus*' (2007), 165-70; Walter Scheidel, 'Slaves of the Soil', *Journal of Roman Archaeology* 13 (2000), 727-32;

bound by birth, *per orginem*, to the land, *coloni originarii*, or *originali*, in relation to that of true slaves bound to the land is one of the dominant themes in the historiography of the later Roman empire, because these persons were in a position the Roman law was not equipped to define. Slavery in Rome depended on the clear distinction in Roman law of property between the inalienable freeborn and those who were alienable because born as slaves. This stood in absolute tension with a reality in which numerous persons lived in a hybrid state, neither true slaves nor really free. Many of the best Roman minds grappled with this because the consequences were real. Among those in limbo were the men, women and children whose labor fed the Roman empire, and those engaged in the legal conundrum were the *domini* who owned them and the land to which they were bound through *origo*, parentage. Such gradations of un-freedom also led to gradations of freedom, which was also not absolute: though born free, such persons were, through their parentage, *origo*, bound like slaves. Such gradations affected the nature of possession and ownership. If two legitimate powers have equal yet conflicting claims, who prevails?

V

Augustine's *Letters* 10* and 24* are among the few sources we posses to reconstruct the evolution of the *colonus originalis* with all its historiographic implications. Further, they show-case Augustine's and Alypius' active participation in the processes of Roman legal practice; other sources confirm that Augustine had participated in similar cases throughout his episcopacy.[63] These aspects alone make these letters enormously valuable for historians of the later Roman Empire. But can we draw out even further implications? First, the letters graphically demonstrate a fact that is well-known but reluctantly accepted: slavery in the Christian Roman Empire was legal. What are the consequences of that fact when Augustine speaks about bondage? What was self-understood in a society in which slavery was a reality, where Augustine moved seamlessly between actual and metaphorical slavery because these were the deep metaphors he and his audience lived by?[64] They knew that a slave was not always

Giuseppe Giliberti, Servus quasi colonus: *Forme non tradizionali di organizzazione del lavoro nella sociatà Romana* (Naples, 1981), 14-5.

[63] Caroline Humfress, 'Episcopal Power in Forensic Contexts: the Evidence from the *Theodosian Code*', in Rita Lizzi Testa and G. Bonamente (eds), *Istituzioni, carismi ed esercizi del potere, IV-V secolo d.C.* (Bari, 2010), 267-71; *ead.*, *Orthodoxy* (2007), 155-71; N. Lenski, 'Evidence for the *Audientia Episcopalis*' (2001), 83-97; Claudia Rapp, *Holy Bishops in Late Antiquity* (Berkeley, 2005), 242; E.-M. Kuhn, 'Rechtsprechung' (2009), 108-11, 119-51; G. Vismara, 'Le *causae liberales* nel tribunale di Agostino vescovo d'Ippona', *SDHI* 6 (1995), 365-72.

[64] David Daube, 'The Self-understood in Legal History', in Calum Carmichael and Laurent Mayali (eds), *Daube on Roman Law* 5 (Berkeley, 2014), 53-64; George Lakoff and Mark Johnson, *Metaphors we Live By* (Chicago, 1980, 2003).

a true slave and a freeborn person not truly free but constrained by *condiciones* that accrued by virtue of parentage, or *origo*. Did, second, Augustine's aware-ness and mastery of the complexity of freedom and slavery in his administra-tive work shape his theological thinking? To be sure, the theological freedom of the will is at least as complex as the social concept of bondage. Neither can be couched in contrasting opposites of free and bound, though the early response of Christians to fatalistic systems lead them to posit just such a binary opposition, between freedom as the image of God versus grace by nature. Augustine, influenced by Stoic notions, altered that opposition in significant ways by proposing an understanding of the will as simultaneously free and enslaved.[65] This paradox has caused scholarly controversy, ranging from Albre-cht Dihle's defense of Augustine as 'the inventor of the modern notion of will' to the dismissal of this notion as an incoherent failure.[66] To these discussions I would like to add a further perspective by asking: What was the social, legal and economic logic encapsulated in terms such as *origo*, *originalis*, *per originem*? Can we make this intrinsic logic fruitful for the analysis of Augustine's theo-logical thought on the free will and the *condicio hominis temporalis*, man's human condition, as a result of the *peccatum originale*?

Augustine's engagement with the issues raised by Julian of Eclanum pre-dates *Letters* 10* and 24* by some thirty years. Already in 396/397, Augustine had introduced the term *originale peccatum* in his response to the Milanese priest Simplician (*Ad Simpl.* I 1.10).[67] Augustine's *Ad Simplicianum* signaled a decisive shift in his thinking about sin, grace, and the free will. This shift did

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[65] Michael Frede, *A Free Will. Origins of the Notion in Ancient Thought.* Ed. A.A. Long, (Berkeley, 2011), 5-18, at 9: *voluntas*, *libertas*, 'must be a notion formed in analogy to the political notion of freedom … freedom from external constraints' and passim; for overviews of the enormous literature see *ibid.* 102-24, and *passim*; Kyle Harper*, From Shame to Sin*: *The Christian Transformation of Sexual Morality in Late Antiquity* (Cambridge MA, 2013), 80-133, esp. 117-32; David Brakke, *The Gnostics: Myth, Ritual, and Diversity in Early Christianity* (Cambridge, MA, 2010), 90-137.

[66] M. Frede, *A Free Will* (2011), 153-74; Albrecht Dihle, *The Theory of Will in Classical Antiquity* (Berkeley, 1982), 144, 169; Johannes Brachtendorf, 'Augustine's Notion of Freedom: Deterministic, Libertarian or Compatibilistic?', *Augustinian Studies* 38 (2007), 219-31; Jessie Couvenhoven, 'St. Augustine's Doctrine of Original Sin', *Augustinian Studies* 36 (2005), 359-96; Simon Harrison, *Augustine's Way into the Will. The Theological and Philosophical Significance of* de Libero Arbitrio (Oxford, 2006), 4-16; John M. Rist, 'Augustine on Free Will and Predesti-nation', *JTS* 20 (1969), 420-40; Gerard O'Daly, 'Predestination and Freedom in Augustine's Ethics', in *Platonism Pagan and Christian. Studies in Plotinus and Augustine* (Aldershot, 2001), X 85-97; James Wetzel, 'Augustine on the Will', in M. Vessey, *A Companion to Augustine* (2012), 339-52; Karmen MacKendrick, 'Freedom in Submission', in Virginia Burrus, Mark D. Jordan, Karmen MacKendrick (eds), *Seducing Augustine. Bodies, Desires, Confessions* (New York, 2010), 62-84, esp. 65-70.

[67] Aug., *De diversis quaestionibus ad Simplicianum* I 1.10; Volker H. Drecoll, *Die Entstehung der Gnadenlehre Augustins* (Tübingen 1999), 204-7, highlighting the Manichean background to the *Ad Simpl.*; D. Ogliari, *Gratia* (2003), 242-5; J. BeDuhn, *Augustine's Manichean Dilemma* 2 (2013), 274-307.

not emerge out of nowhere, as he was the first to emphasize: 'It is not I who invented the *originale peccatum*; the Catholic faith has believed it from ancient times.'[68] Innovation requires preparation, and as Elizabeth Clark, Pier Franco Beatrice, Volker Drecoll, Carol Harrison, Jason BeDuhn and others have pointed out, Augustine responded to other Christian thinkers, Greek and Latin, and expanded his own prior notions.[69] Nevertheless, the *Ad Simplicianum* represented what Paula Fredriksen has called 'a dazzling exegetical *volte face*', ushering in altered concepts of sin and its consequences for divine justice and human free will that Augustine maintained, sharpened, and expanded in the subsequent decades.[70]

As Augustine noted in his *Retractationes*, when responding to Simplician's questions why God had preferred Jacob to Esau, born of the same parent, he 'strove on behalf of the free choice of the human will but God's grace conquered.'[71] Augustine had been forced to conclude in re-reading Paul's *Letter to the Romans* that the fate of Jacob and Esau was not a result of their merit or demerit, but simply of God's decree. God alone chose whom to call to faith and hence offer grace for reasons that were both just and obscure.[72] As a consequence, man's freedom of the will to choose good over evil was severely curtailed.

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[68] Aug., *De nupt. conc.* II 12.25.

[69] Indeed, many Christians before him had argued aspects of what would eventually become Augustine's notion of the *peccatum originale* and its consequences. Thus, Ambrose stressed that Adam's sin led to the condemnation of all mankind, *e.g. In exp. Luc.* VII 234. Ambrosiaster likewise emphasized Adam's responsibility for mankind's sin and added Eve to the equation, that is, he referred to the role the mother played in predetermining the fate of the off-spring, for example in his commentary on *Rom.* 5:12, CSEL 81.1, 163-5, and in his *Quaestio* 127, CSEL 50. 402-9. Commenting on *Rom.* 7:14, the same author emphasized mankind's inability to obey God's commandments fully, CSEL 80.1, 233-5. Nevertheless, it was Augustine who introduced *originalis* into the discussion, and even though this was not his sole contribution, it was a significant one. P.F. Beatrice, *The Transmission* (2013), 5-9 and 128-57; E. Clark, *The Origenist Controversy* (1992), 159-93; Sophie Lunn-Rockliffe, *Ambrosiater's Political Theology* (Oxford, 2007), 17-9, 90-105; J. Pereira, *Augustine of Hippo* (2013), 48, n. 3.

[70] Paula Fredriksen, '"*Excaecati occulta iustitia Dei*": Augustine on Jews and Judaism', *JECS* 3 (1995), 299-324, quote 307. I follow the majority of scholarship in considering the *Ad Simplicianum* a signal point in Augustine's reading of Paul and the consequences of Adam's act of disobedience, while taking the salutary reminders of the continuity of his thought emphasized by Carol Harrison, *Rethinking Augustine's Early Theology: An Argument for Continuity* (Oxford, 2006), esp. 54-66, 237; and V.H. Drecoll, *Die Entstehung* (1999), fully into consideration. See also James Wetzel, *Augustine and the Limits of Virtue* (Cambridge, 1992), 144-60; J. Patout Burns, *The Development of Augustine's Doctrine of Operative Grace* (Paris, 1980), 37-44; P.-M. Hombert, *Gloria Gratiae* (1996), 157.

[71] Aug., *Retr.* II 1: *In cuius quaestionis solutione laboratum est quidem pro libero arbitrio voluntatis humanae, sed vicit Dei gratia.*

[72] *E.g.* Aug., *Ad Simpl.* I 2.2: *haec est autem, ut de operem meritis nemo est glorietur*; Robert Dodaro, '"*Ego miser homo*": Augustine, the Pelagian Controversy and the Paul of Romans 7: 25', *Augustinianum* 44 (2004), 135-44; *id.*, *Christ and the Just Society in the Thought of Augustine* (Cambridge, 2004), 85; J. Pereira, *Original Sin* (2013), 81-113.

For Augustine, that was a side-effect of the *condicio* of Adam's sin, namely mortality, which also led man to lean inevitably toward sinning (*Ad Simpl*. I 1.10).[73] At stake, in 396/397, caused by pressures to respond to fatalistic Manichean teachings, were questions of human free will and the extent of God's grace.[74] What was not yet of central concern were the consequences of Adam's sin in relation to the condition of his penalty: was the penalty for his sin only mortality, with which we are born, or was that sin a *condicio* to be handed down to the rest of mankind in analogy to mortality?

The question of the transmission of sin first became central thanks to the Pelagian Caelestius, who insisted in Carthage in 411 (and in Diospolis in 415) 'that Adam's sin injured only himself, not the human race'; 'that newborn babies are in the same condition as Adam before the fall'; and that those who argued that innocent babies, without any volition of their own, already carried Adam's sin severely questioned God's justice.[75] Julian of Eclanum then pressed these issues further and the question of the transmission of Adam's sin took center stage, as is evident in Julian's writing to Florus and Augustine's response in the *Opus Imperfectum*.[76]

For Julian, the very idea that Adam's sin was transmitted, so that even babies were not innocent, but born enslaved to sin, was utterly barbaric. How could a new born be punished for the sins of his parents? It was the equivalent of selling children to the devil.[77] How could this possibly align with the self-evident truth that God is just and his creation, therefore, equally good and just, so that sin can only result from individual, rational choice?[78] Augustine's, as Julian stressed, was plainly a Manichean idea, since to argue that sin was inherent in human nature denied the very grace of nature as divine creation.[79] No wonder, so Julian, that Augustine had invented the term *peccatum originale*

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[73] Aug., *Simpl*. I 1.2; I 1.4-6; I 1.10; I 1.10; J. BeDuhn, *Augustine's Dilemma 2* (2013), 275-80; E. Clark, *Origenist Controversy* (1992), 230-1; D. Ogliari, *Gratia* (2003), 255-9.

[74] Aug., *Ad Simpl*. I .2.10: 'By grace you are saved through faith, and this is not from you, but is the gift of God, not because of works', J. BeDuhn, *Augustine's Manichean Dilemma 2 (*2013), 275-80; D. Ogliari, *Gratia* (2003), 255-9; Wiliam S. Babcock, 'Augustine and Paul: The Case of Romans IX', *SP* 16 (1985), 473-9.

[75] Aug., *De gestis Pel*. XI 23; *De pecc. orig*. III 3-IV 4; *De pecc. merit*. I 34. 63-4; Marius Mercator, *Commonitorium Caelestii* 36; P.F. Beatrice, *Transmission* (2013), 28-31; Otto Wermelinger, *Rom und Pelagius. Die theologische Position der römischen Bischöfe im pelagianischen Streit in den Jahren 411-432* (Stuttgart, 1975), 4-28, 68-87, 249-53.

[76] J. Lössl, *Julian* (2001), 250-86; O. Wermelinger, *Rom und Pelagius* (1975), 226-38, 264-72.

[77] Jul., *Flor*. = Aug., *Op. Imp*. 1.48: *nascentium persecutor*; J. Pereira, *Original Sin* (2013), 129-40.

[78] Jul., *Flor*. = Aug., *Op. Imp*. 4.136; Jul., *Flor*. = Aug., *Op. Imp*. 1.78: *libertas arbitrii, qua a deo emancipatus homo est*; J. Lössl, *Julian* (2001), 126-37.

[79] Jul., *Flor*. = Aug., *Op. Imp*.I 53-4; Mathijs Lamberigts, 'Was Augustine a Manichaean? The Assessment of Julian of Eclanum', in Johannes van Oort, Otto Wermlinger, and Gregor Wust (eds), *Augustine and Manicheanism in the Latin West* (Leiden, 2001), 113-36.

and used it instead of *peccatum naturale*: it was a cheap attempt to hide the deeply Manichean character of his argument that we are born into slavery to sin through Adam's disobedience.[80] To the contrary, Augustine responded. Everyone could see that even free-born babies suffer death, illness, pain, and, as *Letter* 10* exemplifies, sale into slavery. How could a just God permit this *unless* already a new-born carried the sin of Adam *per originem*? Moreover, Christ had died for all men, babies included, and *unde redimit, si non sunt per originem primi hominis venumdati sub peccato?*, 'from what would he have repurchased us, had we not been born sold to sin through the *origo* of the first man?'[81]

Indeed, Augustine continued, he had chosen *originale* rather than *naturale* to designate this sin, 'because we do not intend a sin of divine making, but a sin of human origin, above all to signify that sin which entered the world through one man', Adam.[82] Of course, human nature, just as creation as a whole, was good.[83] Human nature was not created to carry that sin, hence neither the human body nor the soul are to blame. Adam's sin was an act of willful disobedience, punished by death and the enslavement of the *will* to sin, so that the will was henceforth divided.[84] This will was still free, but it was a freedom now bound such that it could only veer toward the bad.[85] Therefore, Adam's disobedience, not his nature, had sold man, though created free, into slavery to sin, a *condicio* transmitted through man's *origo*, *originem trahere*, from father to sons.[86] Such a collective condition necessarily constrained the *libero arbitrio*, but within these constraints the will operated with moral responsibility.[87] This was particularly true for those who received divine grace, allowing them to obey God's commandments freely. God, searching for

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[80] Aug., *Op. Imp.* II 84: As Julian put it: 'It is completely improbable and false ... and makes the devil appear the creator of man ... to say that human beings even in the womb of their mother are stained with sins from times past'; Aug., *Op. Imp.* V 9.

[81] Aug., *De pecc. mert.* I 23.33.

[82] Aug., *Op. Imp* V 9: '*non divini operis, sed humanae originis ... quod per unum hominem intravit in mundum ...*'

[83] And, hence, God just; Philippe Curbelié, *La justice dans la* Cité de Dieu (Paris, 2004), 18-24, 153-255.

[84] Aug., *Op. Imp.* V 40: *qui enim propterea peccavit, quia voluit, potuit et nolle pecca; et ita homo creatus est, ut nolle posset et velle et quodlibet horum haberet in potestate. Sed aliud est originale peccatum quod etsi trahunt sine propria voluntate nascentes, tamen per voluntatem primi hominis ipsa est origo vitiata; sicut aliud est etiam in maiore homine propter quod dicit: 'Non enim quod volo facio bonum, sed quod nolo malum, hoc ago*', see *Rom.* 7:15.

[85] Marianne Djuth, 'Augustine on Necessity', *Augustinian Studies* 31 (2000), 195-210; R. Dodaro, '*Ego miser homo*' (2004), 135-44; M. Aflatt, 'The Responsibility' (1975), 171-86.

[86] Aug., *Op. Imp* III 12: *reddam peccata patrum in filios*; *Cod. Theod.* XII 1.38; 42; 58; 62; J.M. Rist, 'Augustine' (1969), 424; Mathijs Lamberigts, 'Some Critiques of Augustine's Views on Sexuality Revised', *SP* 33 (1997), 152-61, esp. 154-5.

[87] D. Ogliari, *Gratia* (2003), 249.

the sinner, granted that grace according to his just volition: neither *origo* nor individual merit had anything to do with it.[88]

This very brief summary of Augustine's mature thought on original sin has excluded a great deal to focus on my principal question: does the term *origo* and its cognates provide heuristic value and explanatory power that the term nature does not possess? I think that by now my answer is evident. To recapitulate, after the fiscal reforms of Diocletian, the legal sources increasingly attest a category of tenant famer they denominate *colonus originarius* or *originalis*. At the root of that denomination stood, to quote Cam Grey, 'the link between individuals and land which is the key to the tax system of the Late Roman Empire, and the problems that link presented ... The link was achieved using the *origo*, an administrative concept whereby an area of land could be invested with a proportion of a collectivity's total tax burden, or laden with specific services or duties. Individuals could then be listed in the tax rolls as responsible for that sum of money or bundle of services.'[89] The importance of the *origo* is most evident in the context of *coloni*, but 'it can be seen in other situations too ... [Thus] the *origo* ... should ... be regarded as the defining phenomenon of the tax system of the Late Roman Empire.'[90]

In sum, in the later fourth and early fifth century, the term *origo* had four intertwined connotations. First, it denoted beginning. Second, it denoted birth; less the *natural* aspect of birth than the *man-made condiciones* of birth, that is, the social, legal and economic aspects of birth, including citizenship, that inserted a person into the *ordo* of the *civitas terrena*. Third, these conditions were inherited, which made them simultaneously the responsibility of the collective and the individual. Fourth, as Diocletian's tax reforms revealed their complex consequences, *origo* achieved a technical meaning that encapsulated what Roman law categorically excluded: the co-existence in one person of mutually exclusive concepts, to be both born free *and* enslaved.

I do not want to propose a linear, causal relation between Augustine the administrator and the theologian. But I think that Augustine, the bishop, judge, estate owner, *dominus*, and pastor used *this* full range of meanings when he formulated his concept of the sin *per originem* and its consequences, including the bound *and* free will. Augustine and his detractors – Julian insisted, certainly not by accident, on defining *origo* categorically only as beginning[91] – were

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[88] J. Pereira, *Original Sin* (2013), 152-64, also 164-75; J. BeDuhn, *Manichean Dilemma 2* (2013), 117; D. Ogliari, *Gratia* (2003), 169-75, 230-59, 262-5.

[89] He continues, 'through the concept of the *origo*, then, legislators sought to attach liability for taxation and other *munera* to specific plots of land, and by extension to the persons connected to those plots of land.'

[90] C. Grey, 'Contextualizing' (2007), 155-6; Arnold H. M. Jones, 'The Caste System in the Later Roman Empire', *Eirene* 8 (1970), 79-96.

[91] Iul., *Flor.* = Aug., *Op. Imp.* I 37: *Origo eius [iustitia] divina est ... Ut ergo genus eius (quo nomine nihil alius quam originem intellegi volo) deus est; ita species eius in legem promulgatione*

keenly aware, I think, of the legal and economic connotations of the concepts they employed in their theological debates. And so should we be, because Augustine, the member of the late Roman elite, inserted himself and us, his fellow-slaves, through sin *per originem* deeply into the *ordo* of the *civitas terrena*, so that we might – if the *dominus* wills it[92] – reach the *civitas Dei*, freed from the constraints of *origo*.

iudiciorumque apparet effectibus; J. Lössl, *Julian* (2001), 111, categorically here also understood in its Aristotelian sense.

[92] Aug., *Civ. Dei* XII 28; XXI 12.