Sin, Citizenship, and the Salvation of Souls: The Impact of Christian Priorities on Late-Roman and Post-Roman Society

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I

The impact of Christianity on the functioning of the later Roman empire has been examined by historians ever since Gibbon published his *Decline and Fall.* Had the Christians hastened the decline and fall of Rome? Outlining some themes of his projected work, Gibbon suggested before 1774 that indeed they had. In 1776, when publishing the first volume of his history, he touched on this same issue with considerable circumspection; but five years later, his earlier opinion appeared in print under the heading of "General Observations on the Decline of the Empire in the West" by way of concluding the third volume of the work. Here, Gibbon stated:

As the happiness of a *future* life is the great object of religion, we may hear, without surprise or scandal, that the introduction, or at least the abuse, of Christianity had some influence on the decline and fall of the Roman empire. The clergy successfully preached the doctrines of patience and pusillanimity; the active virtues of society were discouraged; and the last remains of military spirit were buried in the cloister; a large portion of public and private wealth was consecrated to the specious demands of charity and devotion; and the soldiers' pay was lavished on the useless multitudes of both sexes, who could only plead the merits of abstinence and chastity.

But on the other hand, so Gibbon concluded:

If the decline of the Roman empire was hastened by the conversion of Constantine, his victorious religion broke the violence of the fall, and mollified the ferocious temper of the conquerors.[1]

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[1] Edward Gibbon, *The Decline and Fall of the Roman Empire* J.B. Bury, ed. (London, 1896–1900), vol. 4, ch. 38, "General Observations on the Fall of the Roman Empire in the West," 162 *f.*; in the edition of the *Decline and Fall* by David Womersley (London, 1994), the passage appears at pages 510–1. Chapters 1–38 were published together in 1781. The principal focus of eighteenth-century discussion were Edward Gibbon's chapters 15 and 16 of the *Decline and Fall* (chapters 1–16 were printed as the work's first installment in 1776), where the negative impact of Christianity on the Roman empire is merely suggested. See also Gibbon's *Vindication,* published

In returning once more to this much-discussed issue, I begin with a late antique perception, that of Augustine, about what was new and different during the "Christian times" in which he lived. Augustine's views on this topic were not necessarily representative of those held by other Christians, but he did regularly pinpoint issues which preoccupied his contemporaries and which remained important during subsequent generations. It is thus not primarily Augustine's influence on subsequent generations[2] but his observation of, and participation in, his own society that interests us here. As a bishop, Augustine was a member of a formidably powerful elite,[3] and he knew it. For, as will be seen, late-Roman and post-Roman secular and ecclesiastical legislation and the content of wills and donations reveal that social and economic changes such as he and other bishops advocated in theological and pastoral terms did effectively take place. Legislation backed by documentary evidence thus demonstrates that wealth was indeed, as Gibbon expressed it, "consecrated to the specious demands of charity and devotion." At the same time, by following some strands in the late antique reasoning for such bequests, we will arrive at a balance sheet of cause and effect, change, decline and continuity, that overlaps with Gibbon's to a certain extent, although not completely.

II

Augustine was unwavering in his conviction that Christian neglect of the old gods and Christian mores had in no sense brought about Roman military defeat, and in the *De Civitate Dei* he produced a plethora of arguments to support his case. Among these arguments is a long, drawn out meditation about how and why societies or states were able to cohere and, therefore, to survive and on how, furthermore, each individual was incorporated into his or her society and was a member of that society.

Neither of these two themes was new, which was why Augustine took his point of departure from Cicero's definition of the Roman people. In his treatise on the state, as quoted by Augustine, Cicero had observed "that nothing is

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in 1794 by his friend, John, Lord Sheffield; further, *Decline and Fall*, Chapter 20, on "Theory and Practice of Passive Obedience"; "Distribution of the Spiritual and Temporal Powers"; Chapter 21, on "Toleration of paganism." On the "General Observations," see Patricia Craddock, *Edward Gibbon, Luminous Historian* (Baltimore 1989), 8 *ff*; P.R. Ghosh, "Gibbon Observed," *Journal of Roman Studies,* 81 (1991), 132–56. I thank David Potter for drawing my attention to the date of Gibbon's "General observations."

2 Augustine's influence on later ages, though often indirect, was pervasive. See H. I. Marrou, *Saint Augustin et l'Augustinisme* (Paris 1959), 147 *ff*; see also H.-X. Arquillière, *L'augustinisme politique. Essai sur la formation des théories politiques du moyen âge* (Paris 1934). See also, more specifically for the late antique period, Ralph W. Mathisen, "For Specialists Only: The Reception of Augustine and His Teachings in Fifth-Century Gaul," in J. T. Lienhard, Earl C. Muller, and Roland J. Teske, eds., *Collectanea Augustiniana. Augustine: Presbyter Factus Sum* (New York 1993), 29–41.

3 On the rising power and influence of bishops in the later fourth and early fifth centuries, see Peter Brown, *Power and Persuasion in Late Antiquity. Towards a Christian Empire* (Madison 1992), 89–117.

as inimical to society as injustice, and no state can be governed or endure without perfect justice." Augustine then went on to quote Cicero's definition of the state as the "common concern of the people" and added that a people, as Cicero understood it,

> is not any gathering of a multitude but a gathering brought together by consent about law and a community of interests. Cicero then . . . concludes that a state, the common concern of the people, exists when there is a good and just government by either a single monarch or a few aristocrats or the entire people.[4]

This definition of the state could not, as Augustine viewed matters, have applied to pre-Christian Rome because justice "which gives to each his due," could not exist among those who, thanks to their idolatrous worship, did not offer to God what was his due.[5] This was why, as Augustine viewed it, justice and legality had never been fully present in pagan Rome; but that did not mean that the Roman state had simply consisted of a disorderly multitude or that a people could be defined only with reference to justice. Augustine therefore offered an alternative definition of the notions of people and state, once more taking his departure from Cicero:

> If a people is defined not in this but in some other manner, as when we say that a people is a gathering of a multitude of rational beings united by common agreement about the objects of their love, then we must look for these objects of love in order to see what a particular people is like. Whatever these objects of love are, if this gathering . . . is united by common agreement on the objects of its love, it is reasonably described as a people. And it will be a better people to the extent that it is united in loving better things and a worse one to the extent that it loves worse things.[6]

Augustine's definition of the consensus which unites a people by reference to what is loved springs directly from his definition of individuals, whom likewise he characterized by the objects of their love. Individual love was a precondition of collective love, and both these modes of expressing love were shared among all human beings. What defined individuals and states in relation to each other was precisely the nature of their loves. The ancient Romans had loved glory and power above everything else, and these loves and desires, which Augustine—following Sallust and Vergil—described as *libido dominationis* and *amor laudis*,[7] were the qualities that had set pagan Rome apart from

[4] Augustine, *De civitate dei* (hereafter *City of God*) B. Dombart and A. Kalb, eds., 14:1–2 (Corpus Christianorum Series Latina [hereafter CCSL], vol. 14, 1–2 Turnholt, 1955,) 2,21: "Non omnem coetum multiudinis sed coetum iuris consensu et utilitatis communione sociatum."

[5] Augustine, *City of God* 19, 21.

[6] Augustine, *City of God* 19, 24. "Si autem populus non isto sed alio definiatur modo, velut si dicatur, populus est coetus multitudinis rationalis rerum quas diligit concordi communione sociatus, profecto, ut videatur qualis quisque populus sit, illa sunt intuenda quae diligit. Quaecumque tamen diligat, si coetus . . . eorum quae diligit concordi communione sociatus est, non absurde populus nuncupatur: tanto utique melior, quanto in melioribus, tanto deterior, quanto est in deterioribus concors."

[7] Lubido dominationis. Sallust, *Catiline* 2.2, cited in *City of God* 2,14; cupido gloriae, Sallust, *Catiline* 7,3, cited in *City of God* 5,12; cf. Vergil, *Aeneid* 6,823, laudumque immensa cupido, cited in *City of God* 3,16. See also, on the Roman desire for praise, *City of God* 3,18, and, on the

other states. Broadly speaking, however, Rome was no different from other societies because Romans were also defined by their loves. Hence, the Roman empire had never been the exemplary and unique state that Augustine's pagan contemporaries still revered.[8] Rather, Rome was, quite simply, one of many examples of the terrestial city, an analogue to Babylon in the Hebrew Bible,[9] more relevant to Augustine than other such examples merely because he and his readers were Romans themselves. This was true even of the Christian Roman empire. For while Augustine was prepared to concede that Christian emperors might be exempt from the destructive passion of the lust for domination, he nonetheless insisted on the absolute contrast between Rome, the representative of the terrestial city, and the City of God. Unlike some other Christians, therefore, Augustine did not see Rome as an instrument of God's providence, or as dispensing, in the words of a sixth-century Byzantine theologian, the "dispensations of Christ."[10]

The ancient Romans, then, had defined themselves both individually and collectively by their love of glory and domination. However, Roman history was only one of many contexts in which love could be discerned as the defining characteristic of societies and individuals. Hence, the manner in which love defined human beings both collectively as members of a society and individually in their own right occupied Augustine repeatedly when he reflected on the history of humankind. History as we know it, according to Augustine, began with the Fall, with that foundational moment when the first human couple turned their love from God to themselves.[11] This shift in the

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Romans' just reward in this world, *City of God* 5,18–19, where the themes of love of praise and ambition for domination, taken from Vergil and Sallust are recapitulated; 14,16: "Quis enim facile dixerit, quid vocetur libido dominandi, quam tamen plurimum valere in tyrannorum animis etiam civilia bella testantur?"

[8] As a result, pagan Rome could not be differentiated in any decisive fashion from other earlier states, such as the four empires of Daniel which loomed so large in Christian historical thinking of late antiquity, see A. Momigliano, "Daniele e la teoria greca della successione degli imperi," *Rendiconti Accademia dei Lincei. Classe di Scienze morali, storiche e filologiche*, Serie VIII, XXXV:3–4 (1980), 157–62 (now in *Settimo Contributo alla Storia degli Studi Classici e del mondo Antico* (Rome 1984), 297–304. For a useful discussion of the providential role of Rome in fourth century Christian thought (with which Augustine did not agree, see note 24 below), see D. Koch-Peters, *Ansichten des Orosius zur Geschichte seiner Zeit* (Frankfurt 1984), 39–83.

[9] *Cf.* Augustine, *City of God* 18,2

[10] Augustine, *City of God* 5,24 on Christian emperors; R. A. Markus, "Refusing to Bless the State: Prophetic Church and Secular State," in his *Sacred and Secular. Studies on Augustine and Latin Christianity* (London 1994), no. 4, reviewing his earlier work; see also his, "Saint Augustine's Views on the 'Just War,'" *ibid.*, no. 5. From the immense literature about Augustine's view of Rome, I cite merely two important items. Theodor E, Mommsen, "Orosius and Augustine," in his *Medieval and Renaissance Studies*, Eugene F. Rice, ed. (Ithaca 1959), 325–48; Klaus Thraede, "Das antike Rom in Augustins De civitate dei," *Jahrbuch für Antike und Christentum*, 20 (1977), 90–148. On Cosmas Indicopleustes, see Sabine MacCormack, "Christ and Empire, Time and Ceremonial in Sixth-Century Byzantium and Beyond," *Byzantion*, 52 (1982), 287–309 at p. 295.

[11] Augustine, *City of God* 18,2 on Assyria, Sicyon, Athens, and Rome, mentioning Varro and Sallust as points of reference regarding the glory that was acquired by these different polities.

focus of love disturbed the order of their relationsip so as to let the woman, the inferior, prevail over the man, the superior, seeing that first the serpent had spoken to Eve, who then spoke to Adam. There were, thus, two distinct aspects to the familiar story. On the one hand, this falling away from God created an internal, individual disorder within each of these two first human beings because it gave rise to unfocused and disorderly desires such as sexual lust. And on the other hand, this falling away produced a social disorder[12] because Adam listened to Eve as the result of his feeling of proximity and obligation to her, his partner and only companion:

(The serpent) began with the lower end of this human pair in order to reach the whole by stages, for it thought that the man would not be convinced easily nor would he be cheated into committing an error himself, but rather, he would only yield to the error of another. For just as Aaron did not readily agree with the erring people to erect an idol, but only gave way to constraint, and just as it is not credible that Solomon erroneously believed that he had to serve idols, but instead was compelled to commit this sacrilege by a woman's allurements, so also it happened with Adam. He was a man with his woman, the one with the other, one human being with another, the husband with his wife, and he was not led astray to transgress the law of God like someone listening to truthful words; rather, he yielded to the obligation of being her partner.[13]

In short, Adam, Aaron, and Solomon had all experienced a sense of obligation, a *socialis necessitudo,* as Augustine expressed it, in relation to those who were close to them, whether this was a wife, a lover, or the society at large; and it was this sense of obligation, motivated by love, that led them to err.

Here, just as when he was defining the concepts of people and state, Augustine drew on ideas that he had first encountered in Cicero when he was a young man, although the connections are less explicit. In his treatise on moral obligations, Cicero described the social world as extending from hus-

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[12] On the "falling away" (*defectus*) of the individual as both an individual and a social act (*societas peccati*), see Augustine, *City of God* 14,13, in particular: "Spontaneus est autem iste defectus, quoniam, si voluntas in amore superioris inmutabilis boni, a quo inlustrabatur ut videret et accendebatur ut amaret, stabilis permaneret, non inde ad sibi placendum averteretur et ex hoc tenebresceret et frigesceret, ut vel illa crederet verum dixisse serpentem, vel ille Dei mandato uxoris praeponeret voluntatem putaretque se venialiter transgressorem esse praecepti, si vitae suae sociam non desereret etiam in societate peccati."

[13] Augustine, *City of God* 14, 11: "A parte scilicet inferiore illius humanae copulae incipiens ut gradatim perveniret ad totum, non existimans virum facile credulum nec errando posse decipi, sed dum alieno cedit errori. Sicut enim Aaron erranti populo ad idolum fabricandum non consensit inductus, sed cessit obstrictus, nec Salomonem credibile est errore putasse idolis esse serviendum, sed blanditiis femineis ad illa sacrilega fuisse compulsum: ita credendum est illum virum suae feminae, uni unum, hominem homini, coniugem coniugi, ad dei legem transgrediendam non tamquam verum loquenti credidisse seductum, sed sociali necessitudine paruisse." The expression "sociali necessitudine" is unique in Augustine, although he used "necessitudo" alone in other contexts. Despite its uniqueness, however, the expression captures a set of meanings which Augustine discusses elsewhere. A parallel description of Adam's and Solomon's involvement with woman and sin appears in Augustine, *De genesi ad litteram* 11,42 J. Zycha, ed. (Corpus scriptorum ecclesiasticorum Latinorum [hereafter CSEL], vol. 28:1) Vienna 1894). The *City of God* passage is discussed in an excellent article by W. S. Babcock, "Augustine on Sin and Moral Agency," *Journal of Religious Ethics,* 16 (1988), 28–55, at 41*ff.*

band and wife to children, household, city, state and friends, in which obliga-
tions arose. In light of both the diversity of this social world and of the diverse
nature of obligations in themselves, Cicero differentiated obligations by the
criteria of utility and virtuousness, reaching the conclusion that no obligation
could be complied with usefully if it was not at the same time virtuous to do
so.[14] In addition, he suggested, circumstance, and the specific type of relation-
ship or necessitudo that was involved in complying with a given obligation
must be considered:

> In performing all these obligations we must ask what is most needed in each circum-
> stance, and what a person is or is not able to achieve without our help. The degrees of
> relationships are thus not the same as the dictates of circumstances and there are
> obligations which we owe to some persons more than to others.[15]

Not long after his conversion, Augustine, responding to diverse questions
posed to him by African friends and acquaintances, deployed Cicero's criteria
of utility and virtuousness in order to draw a further distinction between use
and enjoyment. As Augustine was often to say subsequently, it behooved
human beings to use the things of this world in order to attain the enjoyment
of God.[16] What went wrong at the Fall in Paradise was, *inter alia,* that Eve
persuaded Adam to seek enjoyment from those things which ought merely to
be used and, thus, to prefer creation to Creator, effect to cause.[17] At the same
time, as Augustine saw it, the issue was that Adam acted in accord with
socialis necessitudo, his sense of duty or "obligation of being Eve's partner."
The first sin, like the subsequent failings of Aaron and Solomon, was thus a
social event, resulting from the fact that, as Cicero wrote and Augustine
agreed, human beings are by nature social beings and are involved with each
other through a network of friendships, kinships, and obligations.[18]

   Augustine's expression socialis necessitudo thus conveys a spectrum of
meanings. On the one hand, it describes an obligation imposed on a person in

[14] Cicero, *De officiis* III,7,34.

[15] Cicero, *De officiis* I,18,59: "Sed in his omnibus officiis tribuendis videndum erit, quid
cuique maxime necesse sit, et quid quisque vel sine nobis aut possit consequi aut non possit. Ita
non iidem erunt necessitudinum gradus qui temporum; suntque officia, quae aliis magis quam
aliis debeantur." For the context, see Andrew R. Dyck, *A Commentary on Cicero, De Officiis*
(Ann Arbor, 1996), *ad loc.* and 3–8, 18–18.

[16] Augustine, *De diversis quaestionibus octoginta tribus, quaestio,* 30. See the excellent intro-
duction to this work by A. A. Mutzenbecher in his edition of *CCSL,* vol. 44A (Turnholt, 1975); on
use and enjoyment (*uti, frui*) see further, Augustine. *De doctrina Christiana* (CCSL 32) 1,3,3 *ff.*

[17] Augustine, *City of God* 11,25; 15,7: "Boni quippe ad hoc utuntur mundi ut fruantur Deo;
mali autem contra, ut fruantur mundo, uti volunt Deo." See also, on good and bad "use,"
Retractationes (CCSL 57) 22,2.

[18] Cicero, *De officiis* I,43,153–4; 44,158; Augustine, *City of God* 19,5: "Quod autem socialem
vitam volunt esse sapientis, nos multo amplius adprobamus. Nam unde ista Dei civitas, de qua
huius operis ecce iam undevicensimum librum versamus in manibus, vel inchoaretur exortu vel
progrederetur excursu vel adprehenderet debitos fines, si non esset socialis vita sanctorum?" See
also, *City of God* 19,3; 17.

light of being a member of society. For example, when commenting on the
Biblical verse, "Whoever comes to me and does not hate his father and mother
and wife and children and brothers and sisters and even his own soul, cannot
be my disciple," Augustine observed that what was called for was not, in
effect, "to hate the human beings themselves, but these temporal necessities,
necessitudines."[19] On the other hand, Augustine used the term necessitudo to
describe obligations or rights conferred thanks to kinship and human prox-
imity, as when he implored his students at Cassiciacum, "If you are at all
indebted to me by love or proximity, necessitudo, . . . be good!" Both these
uses also occur in the *Theodosian Code*.[20] The necessitudo which pressed on
Adam thus describes both his awareness of being bound to Eve his wife by a
bond of marital kinship and the pressure which he experienced as the result of
living with her in that first society. On the one hand, marriage, an expression
of god-given order and a vehicle for raising children, was one of several
expressions of that *societas amicalis* which Augustine thought to be funda-
mental in achieving human nature's goals.[21] But, on the other hand, the
relationship of marriage after the Fall was fraught by the spectre of lustful
intercourse that transformed this form of god-willed kinship or necessitudo
into a negative obligation.[22] This was why, aware of extensive earlier discus-
sion on the topic, Augustine expressed uncertainty as to whether the procrea-

[19] Necessitudines temporales, *De sermone domini in monte* 1,15,40 (Patrologia Latina [hereaf-
ter PL] 34, 1249).

[20] Augustine, *De ordine* (CCSL 29) I,29,51: "Si quid mihi amoris, si quid necessitudinis
debetis . . . boni estote!" See also, *De vera religione* (CCSL 32) 46, 88–89, on *carnales necessi-
tudines* and *temporales necessitudines: City of God* 14,18 (kinship); note especially the passage
14,1: "Diximus iam superioribus libris ad humanum genus non solum naturae similitudine socian-
dum, verum etiam quadam *cognationis necessitudine* in unitatem concordem pacis vinculo con-
ligandum ex homine uno Deum voluisse homines instituere, neque hoc genus fuisse in singulis
quibusque moriturum, nisi duo primi, quorum creatus unus est ex nullo, altera ex illo, id inoboe-
dientia meruissent, a quibus admissum est tam grande peccatum, ut in deterius eo natura muta-
retur humana, etiam in posteros obligatione peccati et mortis necessitate transmissa." *City of God*
15,16 discusses the role of necessitudo (kinship) in primitive and developed human society. For
the meanings of necessitudo in the *Theodosian Code*, see 2,25,1, referring to kin groups; 4,4,2, the
emperor and his circle, necessitudines; 6,4,2, constraint; 8,4,7, kinsmen; 8,18,6, kinsmen; 9,7,8,
kinship; 9,42,9, degrees of kinship; 12,1,49, kinship; 12,1,122, proximity other than blood rela-
tionship; see also, Tacitus, *Annals* 3,29; F. de Zulueta, *The Institutes of Gaius* [hereafter Gaius]
(Oxford, 1946), 3,24.

[21] Augustine, *De bono coniugali* 11,12 (Patrologia Latina [hereafter PL] vol. 40, 382) ordi-
natio creatoris et ordo creaturae; 9,9 (PL 40, 380) societas amicalis; *cf.* 1,1 (PL 40, 373), amicalis
quaedam et germana coniunctio.

[22] *De bono coniugali* 21, 25 (PL 40, 390); further, M. Schmaus, *Die psychologische Trini-
tätslehre des heiligen Augustinus* (Münster, 1927), especially 230 *ff.,* 264 *ff.;* with Margert Miles,
Augustine on the Body (Ann Arbor 1979), 41–77. Augustine, *City of God* 14, 19 and 21; P.
Brown, Sexuality and Society in the Fifth Century AD: Augustine and Julian of Eclanum, in E.
Gabba, ed. *Tria Corda. Scritti in onore di Arnaldo Momigliano* (Como 1983), 49–70, and his *The
Body and Society. Men, Women and Sexual Renunciation in Early Christianity* (New York, 1988),
ch. 19.

tion of children before the fall would even have involved sexual intercourse.[23] But more than intercourse was at stake, for behind a person's choice to marry and to procreate children loomed the larger question of the nature of human society and of its organisation. Given that Augustine adopted from Cicero the concept of the married couple as "some seedbed of the city,"[24] the ambiguities of sexuality were extended to political society at large because the *concupiscentia* and *libido carnalis,* which all too readily characterized the society of marriage, had their counterpart in the public sphere in the *libido dominationis,* the lust for power, which, as Augustine insisted so resolutely, tended to characterize the behaviour of those who directed political society at large.[25] Even apart from this perennial flaw in those who exercized power, power in itself confronted its holder with a dilemma. Although Augustine praised the Christian emperors of the fourth century because "they ruled justly," he emphasized, in describing the work of a judge from his own long experience of presiding in his episcopal court, the ignorance and uncertainties in which any judicial decision would inevitably be grounded.[26] In effect, to rule justly was more than could be hoped for because, however just the law, its adminstration was subject to human error.

Behind this practical difficulty stood the specter of further moral and theological dilemmas involving the sexual conduct and religious allegiance of Christians living in the terrestial city. Fornication and divorce were not pun-

[23] Augustine, *De bono coniugali* 2,2 (PL 40, 373): "nec nunc opus est ut scrutemur, et in ea quaestione definitam sententiam proferamus, under primorum hominum proles posset existere, quos benedixerat Deus, dicens, Crescite et multiplicamini, et implete terram, si non pecassent; cum mortis conditionem corpora eorum peccando meruerint, nec esse concubitus nisi mortalium corporum possit. Plures enim de hac re sententiae diversaeque existiterunt: see also *City of God* 14,26.

[24] Augustine, *City of God* 19,16: "Quia igitur hominis domus initium sive particula debet esse civitatis . . . satis apparet esse consequens, ut ad pacem civicam pax domestica referatur"; *City of God* 15, 16, line 84: "Copulatio igitur maris et feminae, quantum adtinet ad genus mortalium, quoddam seminarium est civitatis"; with Cicero, *De officiis* 1,17,54: "nam cum sit hoc natura commune animantium, ut habeant libidinem procreandi, prima societas in ipso coniugio est, proxima in liberis, deinde una domus, communia omnia; id autem est principium urbis et quasi seminarium rei publicae." For *City of God* 15,16, *cf.* Brent Shaw, "The Family in Late Antiquity: The Experience of Augustine," *Past and Present,* 115 (1987), 3–51, at 11.

[25] Compare note 8 above. G. Bonner, *Libido* and *concupiscentia* in St. Augustine, *Studia Patristica,* VI (Berlin 1962), 303–14.

[26] Augustine, *City of God* 5,24: "Felices eos [the Christian emperors] dicimus si iuste imperarant"; on the judge in court, *City of God* 19,6; Augustine's own activity as judge and mediator, Possidius, *Life of Augustine;* M. Pellegrino, ed., *Vita di San Agostino* (Edizioni Paoline Alba, 1955), 19; Wolfgang Waldstein, "Zur Stellung der *episcopalis audientia* im spätrömischen Prozess," *Festschrift für Max Kaser zum 70. Geburtstag,* D. Medicus and H. H. Seiler, eds. (Munich 1976), 533–56; Wilfried Hartmann, "Der Bischof als Richter nach den kirchenrechtlichen Quellen des 4. bis 7. Jahrhunderts," in *La Giustizia nell' alto Medioevo, secoli 5–8. Settimane di studio del centro italiano di studi sull' alto Medioevo* (Spoleto, 1995), 805–42; Edward James, "*Beati pacifici:* Bishops and the Law in Sixth-Century Gaul," in John Bossy, ed. *Disputes and Settlements: Law and Human Relations in the West* (Cambridge 1983), 25–46; note page 45 on the differences between Frankish and Visigothic practice.

ishable in Roman law but merely regulated. A Christian bishop, on the other hand, viewed these acts as sins requiring exhortation and correction, as when in 403, Augustine said in a sermon:

We see the danger in which you are, brethren, and we pay no heed to what you want from us: for if a physician pays attention to the wishes of the patient, he will never cure him. You must not do what is not to be done. You must not do what God has forbidden. He who believes in God will hear from him what we are saying. In the eyes of those who are unwilling to be corrected it was certainly preferable that we should not come to this point if we were going to speak out as we do; or else, seeing that we have got to this point, that we should not be saying these things.[27]

In addition, with respect to worship, Augustine, like others before him, urged the imperial court to enact legislation against dissenters from mainstream Catholic Christianity and praised the emperor Theodosius because he never "rested from aiding the church in its labours against the impious by his most just and compassionate laws . . . ordering that the images of the gentiles should everywhere be overthrown."[28]

III

Augustine did not envision that a perfect society would result from such measures, given that human affairs were perennially characterized by a pervasive "mixture of good and evil."[29] What he and other bishops before and after him did envisage was the change of existing legislation, which indeed happened. A small, and apparently non-official legislative compilation, the *Mosaicarum et Romanarum legum collatio*, generally dated to the later fourth

[27] Augustine, *Sermo* 9,4 (PL 38, 79): "Nos, fratres, pericula vestra intuemur, non voluntates vestras attendimus: nam et medicus si voluntatem aegri attendat, numquam illum curat. Quod non est faciendum, non fiat: quod prohibet Deus non fiat. Qui Deo credit, ab ipso audit quod dicimus. Certe melius erat quibusdam nolentibus corrigi, ut vel huc non veniremus, si ista dicturi eramus; vel quia iam venimus non ea diceremus." (I thank Charles Witke for discussing the translation of this passage with me.) See also Augustine *De bono coniugali* 14,161–5,17 (PL 40, 384–5); *City of God* 14,18. On ecclesiastical endeavours to control sin through the imposition of penitence, see Emil Göllner, "Analekten zur Bussgeschichte des 4. Jahrhunderts," *Römische Quartalschrift* 36 (1928), 235–98. The new moral code being expounded in Christian teaching also had an impact on imperial legislation regarding marriage and family, see B. Biondi, *Il diritto romano cristiano* (Milan, 1952–54), vol. II, chs. 19–23; J. Gaudemet, "Tendances nouvelles de la legislation familiale au IVè siècle," *Antiquitas*, 29 (1978), 187–206, reprinted in his *Église et Société en Occident au Moyen Age* (London, 1984).

[28] *City of God* 5.26: "Non quievit iustissimis et misericordissimis legibus adversus impios laboranti ecclesiae subvenire. . . . Simulacra gentilium ubique evertenda praecepit." See the important essay by E. Lamirande, *Church, State and Toleration. An Intriguing Change of Mind in Augustine.* (The Saint Augustine Lecture) (Villanova, 1974); see also Frank Morgenstern, "Die Kaisergesetze gegen die Donatisten in Nordafrika (Mitte 4.Jh. bis 429) im Zusammenhang mit dem antidonatistischen Wirken des Augustinus von Hippo," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Rom. Abt.*, 110 (1993), 103–23. Peter Brown, *Authority and the Sacred. Aspects of the Christianization of the Roman World* (Cambridge 1995), ch. 2, points out that the rigour of the law was rarely enforced.

[29] Bonorum malorumque permixtio: see e.g. *Sermo* 223 (PL 38, 1092).

century and considered to be of Christian, rather than Jewish origin,[30] can be taken as a sign of things to come. The work compares laws of the Hebrew Bible with various sources of Roman law so as to demonstrate that the two systems were in harmony. Harmony usually emerges, if only on the surface; but on occasion, it does not. For example, title XV of the *Collatio* cites a passage from *Deuteronomy* in which human sacrifice, divination, and necromancy are forbidden, seeing that

because of these . . . abominations God shall eradicate the Chaldeans from before your face. . . . For these nations, which you shall possess, have listened to auguries, oracles and divinatory utterances.

On the Roman side, the *Collatio* cites a text from Ulpian and another from the Gregorian Code. Ulpian reviews, with brief discussion, a set of legislative measures against astrologers and diviners, especially when their predictions involved the life of the emperor. The passage from the Gregorian Code, a rescript by Diocletian and Maximian, inveighs against the teachings of sorcerers and Manichees, members of "an unheard of sect" as being incompatible with "our most blessed age."[31] Such rhetorical flourishes, redolent with moral exhortation, were characteristic of late antique legislation.[32] This legislation, however, responded to concrete, specific actions with concrete punishments that were executed by human authority, whereas the counterpart from *Deuteronomy* envisions punishment wrought by the hand of God. Divine punishment is a frequent theme in Christian writings of the fourth and fifth centuries,[33] and Augustine himself discussed the topic repeatedly, while finding the laws of the City of God preferable to those of the Roman state. The two types

[30] On the *Collatio*, see L. Wenger, *Die Quellen des römischen Rechts* (Vienna, 1953), 545–8. I have not been able to see G. Barone-Adesi, *L'età della "Lex Dei"* (Naples 1992), who, according to Wolfgang Waldstein, "Ius naturale im nachklassischen römischen Recht und bei Justinian," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Rom. Abt.*, 111 (1994), 1–65 at note 14, suggests that the *Collatio* derives from a Jewish environment and dates to the reign of Diocletian. See also Leonard Victor Rogers, *The Jews in Late Ancient Rome. Evidence of Cultural Interaction in the Roman Diaspora* (Leiden, 1995). I thank Hagith Sivan for drawing my attention to this work. Initially, no major theoretical modification appeared to be required in the scope of Roman legislation because Christian moral precepts converged with earlier philosophical teaching which had found expression in Roman law. See, for instance, on *aequitas*, Biondi, I, 107–12; II, 28–43; III, 384–7; on natural law, Ernst Levy, Natural law in Roman thought, *Studia et documenta historiae et iuris*, 15 (1949), 1–23.

[31] *Mosaicarum et Romanarum legum collatio*, M. Hyamson, ed. (London 1913), title 15, citing *Deuteronomy* 18,10–14.

[32] E. Vernay, "Note sur le changement de style dans les constitutions impériales de Dioclétien à Constantin," *Études d'histoire juridique offertes à Paul Frederic Girard*, II (Paris 1913), 263–74; F. Wieacker, "Vulgarismus und Klassizismus im Recht der Spätantike," *Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil. hist. Kl.* (1955,3); *idem, Allgemeine Zustände und Rechtszustände gegen Ende des weströmischen Reiches. Ius Medii Aevi*, I:2a (Milan 1963), 38 *ff.*

[33] Françoise Thelamon, *Païens et chrétiens au IVe siècle. L'apport de l'Histoire ecclésiastique de Rufin d'Aquilée* (Paris, 1981), pt. III, on divine interventions in history, whether punitive or favourable; on Salvian, an exegete of divine punishment, see Jan Badewien, *Geschichtstheologie und Sozialkritik im Werk Salvians von Marseille* (Göttingen, 1980).

of laws did indeed differ profoundly, for where the law of the City of God dealt with sin, and moreover with sinful intention, traditional Roman law, although also concerned with intention, regulated more tangible forms of wrongdoing.[34]

In the *Theodosian Code*, however, we can document the incorporation of sins into the purview of the criminal code; and as a result, the range of actions surveyed by the law changed and expanded. But this was not all, for the addition of sin to the earlier repertoire of unlawful actions entailed a profound shift in conceptions of the state. Here, Christian preoccupation with moral and religious issues converged with an existing tradition of imperial intervention in details of daily urban life. Emperors, for example, took an active role in the organization of public entertainment. This matter became more complex in Christian times, when emperors found themselves caught between popular enthusiasm for theatrical and other shows on the one hand and Christian wholesale disapproval of them on the other. Hence, imperial legislation endeavoured to protect actresses who had found a vocation in a rigorous Christian life by exempting such women from the obligation of following their profession but tried to take into account the interests of managers who needed these women for their public shows. In a similar vein, the emperors Theodosius, Arcadius and Honorius prohibited the display of portraits of actors and performers in pantomimes anywhere near the official imperial images but did allow them near entrances of theatres and the circus.[35] In addition, Christian emperors at times expressed a legislative interest in the welfare of souls. For instance, a law of Arcadius and Honorius, adddressed to the proconsul of Africa in 407 AD, reiterates earlier legislation against Donatists and Manichees but exempts from penalty those who convert to the Catholic faith, the reason being that "customarily, punishment purges crime, but we desire to correct the depraved wills of men by urging penitence." Similarly, a law of Theodosius II that ordered the burning of works of the philosopher Porphyry states that "we do not desire that matters which move God to wrath and injure souls should so much as reach the ears of men."[36]

Likewise, in the private sphere, Christian precept led to reformulations and

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[34] The distinction did not escape the jurists, see B. Biondi, *Il diritto romano-cristiano* (Milan, 1952–54), vol. II, 305–26; also 44 *ff.*; vol. III, 421 *ff.*; on intention in Roman law, see Max Kaser, *Das römische Privatrecht. Erster Abschnitt* (München, 1971), 234–46; *Zweiter Abschnitt* (München, 1975), 82–91.

[35] Actresses: *Theodosiani libri XVI*, P. Krueger and T. Mommsen, eds. (Berlin, 1905), 15,7,1; 2; 4; 8; 9; 10 [hereafter *Theodosian Code*]; Theodosian Code 15,7,12: portraits of performers in pantomimes and of actors.

[36] *Theodosian Code* 16,5,41: "Licet crimina soleat poena purgare, nos tamen pravas hominum voluntates admonitione paenitentiae volumus emendare." *Codex Justinianus* (in Paul Kruger, ed., *Corpus Iuris Civilis*, vol. II (Berlin, 1872) [hereafter *Codex Justinianus*] 1,1,3: πάντα γὰρ τὰ κινοῦντα τὸν θεὸν εἰς ὀργὴν συγγράμματα καὶ τὰς ψυχὰς ἀδικοῦντα οὐδὲ εἰς ἀκοὰς ἀνθρώπων ἐλθεῖν βουλόμεθα; see also *Theodosian Code* 16,1,2, of 380 ordering Christians to follow the faith of St. Peter, and threatening recalcitrants with imperial punishment and celestial vengeance.

shifts in earlier legislation and legal precept. The issue may be illustrated by examining the Christian institution of baptismal sponsorship and the changing rules that governed rights of inheritance, specifically the extent of a testator's discretion in bequeathing property to the church instead of leaving it to his heir. Our concern is with the rules of conduct which originated within Christian communities and expressed social and theological teachings that were specific to these communities. However, because their implementation did in due course impact on the wider society within which Christians lived,[37] these rules entered the purview of the state. Furthermore, in occupying themselves with issues essentially Christian and non-secular such as the *rite de passage* of baptism and pious bequests given, most frequently, for the welfare of the donor's soul in the life after death, representatives of the Roman state imperceptibly redefined the state's function.

The ceremony of baptism marked a person's entry into the Christian community. For Augustine, this ceremony defined a transaction that was primarily theological, that is, the liberation of the candidate from original sin. On the one hand, original sin was contracted before one's very birth, thanks to the "carnal delight" of one's parents. In another sense, original sin was a "social necessity," the result of the sinner's inevitable coexistence with other human beings in society. Baptism thus gave expression to the "spiritual will" of the candidate, or of the candidate's parents or baptismal sponsors.[38] This expression had, by Augustine's day, been articulated by various regulations and rituals which governed the admission of catechumens into the Christian community. From the late second century, or even earlier, candidates for baptism were introduced by a teacher or other person willing to stand surety for their character and conduct.[39] Baptism thus created a set of relationships and responsibilities within each Christian community which some authors described in quite specific terms. Tertullian, for example, urged that catechumens should

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[37] G. Krueger, "Die Fürsorgetätigkeit der vorkonstantinischen Kirchen," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte 55, Kanonistische Abteilung*, 24 (1935), 113–40; see especially, on the public and juridical impact of Christian charity, 133 *ff.*

[38] Augustine, *Ep.* 98,1 (Corpus Scriptorum Ecclesiasticorum Latinorum [hereafter CSEL]) 34,2, p. 520: Baptismi salutaris esse virtutem . . . ut semel generatus per aliorum carnalem voluptatem, cum semel regeneratus fuerit per aliorum spiritalem voluntatem. See the discussion of this letter by Joseph H. Lynch in *Godparents and Kinship in Early Medieval Europe* (Princeton, 1986), 128 *ff.*

[39] On the evolution of the ritual of baptism, see Hugh M. Riley, *Christian Initiation; A Comparative Study of the Interpretation of the Baptismal Liturgy in the Mystagogical Writings of Cyril of Jerusalem, John Chrysostom, Theodore of Mopsuestia, and Ambrose of Milan* (Washington D.C., 1974); on the earliest mention of baptismal sponsors of adults by Hippolytus of Rome (*Apostolic Tradition* 16), see Lynch, *Godparents and Kinship*, 36 *ff.*; Michel Dujarier, *Le parrainage des adultes aux trois premiers siècles de l'Église; récherche historique sur l'évolution des garanties et des étapes catéchuménales avant 313* (Paris, 1962), 197 *ff.*; R. F. Burnish, "The Role of the Godfather in the East in the Fourth Century," *Studia Patristica,* 17:2 (1979 (1982), 558–64; J. Corblet, *Histoire dogmatique, liturgique et archéologique du sacrement de Baptême,* II (Paris, 1882) 177 *ff.* is still useful.

be baptized late rather than early, lest the sponsor needlessly assume the responsibility for his charge breaking the baptismal vows.[40] During her pilgrimage to the holy places, Egeria observed that in Jerusalem a stranger unable to produce local witnesses to give evidence as to his good character would probably not be admitted to baptism; and in a similar vein, the Council of Elvira had earlier decreed that those who had been baptized elsewhere could not join the clergy "because their lives were not at all known."[41] Egeria referred to baptismal sponsors as fathers and mothers, while Chrysostom and others mention spiritual fathers.[42] That such terminology described a concrete and lasting relationship emerges from a law of Justinian, dated 530 AD. The law begins by resolving an old ambiguity: a man was free to marry the foster daughter, *alumna,* whom he had manumitted, even if she had been raised "in the place of a daughter." But this new rule could not be extended to include a girl who had become a man's daughter through baptism:

A woman whom a man has received from holy baptism, whether or not she is his foster daughter, may in no circumstances marry this man. For there is no other bond that is as likely to occasion paternal affection and the lawful prohibition of marriage as this one, by which, in the presence of God, their souls are conjoined.[43]

The rule preventing godfather and goddaughter from marrying, repeated at the Trullan Council, was accepted by Pope Gregory II in 721 as applicable in the West.[44] In strictly legal terms, the closest analogy to the relationship between baptismal sponsors and their charges came from the Roman rules governing adoption. According to the jurist Paul, "adoptive kinship altogether obstructs marriage between parents and children, and among siblings it does so as long as *capitis minutio* does not arise."[45] Moreover, in a strictly Christian sense, the

[40] Tertullian, *de baptismo* 18,4–5; *cf.* Origen, *Contra Celsum* 3,51; Ps. Dionysius, *De Ecclesiastica Hierarchia* II,2,1–8; *cf.* II,3,4 (Patrologia Graeca 3, 393–7; 400 *f.*) describes the entire ritual of baptism and the role of the sponsor in it, as carried out in his day; regarding the terminology of adoption in baptism, note the expression in II,2,7, col. 396C,τὴν μητέρα τῆς ὑιο θεσίας to refer to the font. Note, along with Tertullian's opinion, the evidence on infant baptism in the early church collected by Joachim Jeremias, *Infant Baptism in the Early Church* (Philadelphia, 1962).

[41] Council of Elvira, Canon 24, "Eo quod eorum minime sit cognita vita," in José Vives, ed. *Concilios Visigoticos* (Barcelona, 1963), 6.

[42] M. Dujarier, *Le parrainage des adultes,* 53 *f.;* for the baptismal sponsor as "pater" in the Penitential of Theodore, see P. W. Finsterwalder, *Die Canones Theodori Cantuariensis,* p. 275, section VII.69; p. 317, section IV, 8. The *Liber sacramentorum Gellonensis* (A. Dumas, ed., CCSL 159) refers to godparents as "qui eos suscepturi sunt" [from the font], see sections 706; 709. The alternative rite in this sacramentary uses this same terminology along with patrini and matrini, see section 2226 and 2232 (2324 uses "patrini qui eos suscepturi sunt").

[43] *Codex Justinianus* 5,4,26,2: "Ea videlicet persona omnimodo ad nuptias venire prohibenda, quam aliquis, sive alumna sit sive non, a sacrosancto suscepit baptismate, cum nihil aliud sic inducere potest paternam adfectionem et iustam nuptiarum prohibitionem, quam huiusmodi nexus, per quem deo mediante animae eorum copulae sunt."

[44] J. H. Lynch, *Godparents and Kinship,* 235 *ff.;* see also E. Patlagean, "Christianisation et parentes rituelles: le domaine de Byzance," *Annales ESC,* 33:3 (1978), 625–36.

[45] Paul, *Sententiae,* 2,19,4 (in J. Baviera, ed., *Fontes Iuris Romani Antejustiniani,* vol. 2

analogy of adoption also described accurately what occurred in the ceremony of baptism; to use Augustine's terms, a person was born into the terrestial city, while at baptism, he was reborn and adopted into the City of God.[46]

At the same time, there existed a substantial difference in outlook between Augustine and Christian legislators of subsequent generations. Where Augustine thought about baptism as creating a relationship of adoption between human beings and God and of brotherhood between human beings and Christ,[47] legislators for the most part concerned themselves with the human, rather than the supernatural, relationships that arose from baptismal sponsorship. Baptismal sponsorship created relationships between human beings that were capable of verification and societal regulation, and those relationships in turn contributed to the expansion and redefinition of the state's legislative program in post-Roman Western Europe.[48]

On occasion, moreover, secular arrangements were conditioned by the significance of baptism in itself, and not merely by the relationships of spiritual kinship that it generated. An instance can be pinpointed in a law of the Visigothic *Liber Iudiciorum,* which was promulgated in 654. This law confronted the question whether an inheritance claimable by a baby who had

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(Florence, 1968), 345): "Adoptiva cognatio impedit nuptias inter parentes ac liberos omnimodo, inter fratres eatenus quatenus capitis minutio non intervenit"; Buckland, *A Textbook of Roman Law from Augustus to Justinian* (Oxford, 1921), 105 *f.;* P. E. Corbett, *The Roman Law of Marriage* (Oxford, 1930), 47–48; Zulueta, *Gaius* II.30–31.

[46] Augustine, *Epistulae* (CSEL 34) 98,2, on rebirth; *Contra Faustum* 3,3 (CSEL 25,1, p. 264 *f.*), on adoption.

[47] Augustine, *Contra Faustum* 3,3 (CSEL 25,1, p. 264): "Ut fratres Christi secundum modum nostrum faceret, adoptavit. iste itaque modus . . . ut filii eius essemus, adoptio vocatur"; further on, Augustine draws the parallel of human adoption.

[48] J. H. Lynch, *Godparents and Kinship,* 219–42, on prohibitions of marriage between individuals related by spiritual kinship, and 242 *ff.,* on the laws of King Ine laying down compensation to be awarded for the murder of a spiritual son or father. See further, on the impact of ecclesiastical concerns on secular legislation involving marriage, Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge, 1983), ch. 3. See also pages 68 *ff.* and 204 *ff.,* on "strategies of heirship." Throughout the book, Goody argues that the church, by prohibiting or restricting existing modes of succession (especially by adoption), augmented its own economic resources (especially 45 *ff.;* 75; 123 *f.;* 196 *ff.*). It must be said by way of qualification, however, that this outcome does not appear to have been the result of a deliberate policy on the part of late Roman and early medieval ecclesiastics. One of the points being made in this essay is that the manner in which individuals conceive and orchestrate their role in society does indeed have economic consequences, but at the same time these economic consequences do not necessarily dominate or even condition a given individual's actions and self-perception. In the wills being considered below, it was the future of their souls that motivated donors to make gifts to the church, not the idea that the church should become wealthy. For a fundamental corrective to Goody's argument, see Bernhard Jussen, *Patenschaft und Adoption im frühen Mittelalter* (Göttingen, 1991). See also, William Klingshirn, *Caesarius of Arles. The Making of a Christian Community in Late Antique Arles* (Cambridge, 1994), 195 *f.,* 199 *f.* Finally, Herlihy, "Church Property on the European Continent 701–1200," *Speculum,* 36 (1961), 81–105 (and his *The Social History of Italy and Western Europe, 700–1500* (London, 1978), ch. V), demonstrates that the wealth of the church was not as extensive as might be thought, if one pays too exclusive an attention to the bequests left to it.

died shortly after birth would pass to that baby's parents. The problem addressed here was not new, for in 426, a law issued from Ravenna by the emperors Theodosius II and Valentinian III had mandated that a father whose wife had died in childbirth and whose baby had then also died should inherit as successor to this baby, even if his wife had failed to make provision for such an eventuality. This law was in turn included in the *Breviary of Alaric* along with an interpretation that slightly extended its scope. For here, "the baby, even though it cannot speak, takes the inheritance owing to it, and according to law is at death succeeded by his father or next of kin."[49] The Visigothic *Liber Iudiciorum* reiterated this principle but added a Christian twist to it by specifying that parents could claim a baby's legacy only if that baby had been baptized and not otherwise. As the legislator rhetorically expressed it:

How will the world's share enrich a person who has been caught by death unawares and who will not attain the enduring light of heaven? And by what reason can someone who more nearly entered death than life approach the laws of the living? For hardly had he been thrown into full daylight as a shipwreck from the straits of birth, when he slipped back into the doom of darkness.

What therefore had to be ascertained, the legislator stated, was whether the baby had been properly alive, for unless it had been, it could neither inherit nor bequeath property.

The life of the deceased shall thus be verified, if indeed it was truly a life, both so that the closest relatives may gain access to the deceased's succession, and so that participation in eternal life may attend this same terrestial life, short though it was. Whoever is born, whether male or female, shall only gain title to his or her inheritance, provided that after birth, and after the grace of holy baptism has been attained, he or she lives for the duration of ten more days. In this way, the successor, whether father or mother, who hopes to acquire the advantage of a terrestial inheritance through this baby, shall first make ready the life of the eternal abode for the one who is to die, and in this way the baby while living shall rightly procure the earth and its fragile wealth. Thus, by a healthful interchange, while one inherits heaven, the other inherits the soil. While for the one celestial benefits are prepared, others may lawfully take the things of this earth. While one obtains true life, the other procures what is transitory. Thus, although the deceased was not able to possess the law of this earth, he was able to obtain a celestial reward that was purchased by terrestial law.[50]

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[49] *Theodosian Code* 4,1. The *Breviary of Alaric* continued to be consulted in Frankish Gaul until the ninth century and beyond, while in Spain, it was superceded by the *Liber Iudiciorum*, which in turn gave rise to the *Fuero Juzgo;* J. Gaudemet, "Le Bréviaire d'Alaric et les Épitômes," in his *La formation du droit canonique médiéval* (London, 1980), vol. I; see also note 76 below.

[50] *Liber Iudiciorum* (in Karolus Zeumer, ed., *Leges Visigothorum* (Berlin, 1902)), 4,2,17: "Quemque non hereditabit producta lux celi, qualiter morte contractum inprobisa ditabit portio mundi? Quave etiam ratione adgreditur viventium iura, cui vicinius fuit, mortem adisse quam vitam? Sicque naufragus in medio lucis angustias mox genitales exiit, mox fatales relapsus est in tenebras. Ut ergo et proximis parentibus ad successionem huius aditus reseretur, et ipsa defuncti vita conprobetur, si vere clara sit vita, adque hanc ipsam licet parvi temporis vitam comitetur eterne participatio vite, non aliter in utroque sexu hereditatem capiet que nascitur, nisi post nativitatis ortum et sacri baptismatis gratiam consequatur et decem dierum spatiis vixisse probetur: ut successoris patris vel matris persona, que per hunc parvulum terrene cupit hereditatis

A person's citizenship in the City of God, acquired—as Augustine had explained—through baptism, has here become the criterion for the acquisition of rights to be exercized exclusively within the framework of the terrestial city. Where Augustine had thus insisted that the City of God arose out of, and existed within the terrestial city,[51] with passage of time, the converse also turned out to be true.

IV

A similar evolution, whereby the institutions of the terrestial city were transformed by those of the *civitas dei,* may be traced by examining late Roman laws of inheritance. From apostolic times, the church had received gifts and owned property.[52] Augustine was thus drawing on a long tradition of pastoral advice when he urged the Christian *paterfamilias* to adopt Christ as one of his heirs when making a will. The thought, which followed the precepts of Jerome and the Cappadocian fathers, came to him in stages.[53] In 403, he advised his hearers in a sermon to leave some proportion of their property to Christ as treasure in heaven.[54] Some time later, he adapted the project to a concrete situation.

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adquirere commoda, ante morituro eterne mansionis preparet vitam et ita demum adsequatur vivens cum rebus labentibus terram. Sicque salutari commerico, dum hereditat ille celum, hereditat iste solum; dum illi providentur celestia, isti permittantur adire terrena; dumque adsequitur ille vitalia, conquirat iste caduca: ut etsi defunctus terrenum ius non potuit possidere, terreno saltim emtum iure celeste lucrum valeat obtinere." From the *Liber Iudiciorum,* a recension of this law passed into the *Fuero Juzgo,* where also the baby that died had to be baptized if legacies were to be claimed from it, see *Fuero Juzgo en Latin y Castellano cotejado con los . . . codices por la Real Academia Española* (Madrid, 1815), lib.4, tit. 3, 17 (*cf.* 18), and, in the Spanish version, lib. #4, tit. 2, 18 (*cf.* 19). Further on the tradition of the *Liber Iudiciorum,* Yolanda Garcia Lopez, "La tradición del Liber Iudiciorum: una revisión," in *De la antiguedad al medievo. Siglos IV-VIII. III Congreso de Estudios Medievales* (Fundación Sánchez-Albornoz, 1993), 381–415; Roger Collins, "'Sicut lex Gothorum continet': Law and Charters in Ninth- and Tenth-Century Leon and Catalonia," *English Historical Review,* 396 (1985), 489–512; *idem,* "Visigothic Law and Regional Custom in Disputes in Early Medieval Spain, in Wendy Davies and Paul Fouracre, eds. *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), 85–104. For "salutare commercium," a possible liturgical allusion, *cf.* the Spanish mass for Maundy Thursday, Marius Férotin, *Le Liber Mozarabicus Sacramentorum et les manuscrits mozarabes* (Paris, 1912), 238; "O admirabile, Christe, tuum comercium," words occurring, as in the law, in a context of antitheses of positives and negatives.

[51] Augustine, *City of God* 1,35, with Amos Funkenstein, *Heilsplan und natürliche Entwicklung. Gegenwartsbestimmung im Geschichtsdenken des Mittelalters* (Munich, 1965), 36 *ff.;* R. A. Markus, *Saeculum: History and Society in the Theology of St. Augustine* (Cambridge, 1970), ch. 4.

[52] On the legal implications, G. Krueger, *Die Rechtsstellung der vorkonstantinischen Kirchen* (Stuttgart, 1935; Amsterdam, 1961), 146 *ff.;* see also L.Wm. Countryman, *The Rich Christian in the Church of the Early Empire: Contradictions and Accommodations* (New York, 1980); Boniface Ramsey, "Almsgiving in the Latin Church: The Late Fourth and Early Fifth Centuries," *Theological Studies, 43* (1982), 226–59.

[53] E. F. Bruck, *Kirchenväter und soziales Erbrecht* (Berlin, 1956), 76 *ff.;* 100 *ff.* See also, Graham Gould, "Basil of Caesarea and the Problem of the Wealth of Monasteries," in W. J. Sheils and Diana Wood, eds. *The Church and Wealth* (Oxford, 1987), 15–24.

[54] Augustine, *Sermo* 9,13,21 (PL 38, 90 *f.*); *Sermo* 38,4,6–7;9 (PL 38,237–9).

You have lost a son: although you did not lose him, but rather, have sent him ahead
. . . . Since he has gone ahead, let his property be sent to him: He cannot join his
property, but it can join him. See in whose presence he is. If your son were to serve in
the palace and become a friend of the emperor, and were to say to you, "sell my share at
home and send it to me," would you hesitate in your response? Now, as it is, your son is
with the emperor of all emperors, the king of kings . . . he is your son: send his
property to him. I do not say that he has need of it, but his lord, with whom he abides, is
needy on earth.[55]

Next came the idea of adding Christ to the number of one's sons. "You have a
son, let Christ be the second; you have two, let Christ be the third."[56] Finally,
towards the end of his life, in 425 or 426, Augustine was confronted with a
legacy to the church of Hippo from the priest Januarius, who had disinherited
his children. Augustine refused to accept this legacy and explained:

If someone . . . is angry with his son and on the point of death disinherits him, would I
not pacify him if he were to live? Ought I not to reconcile his son to him? But how can
I wish that he make peace with his son when I covet that son's inheritance? On the
other hand, if such a man does what I have often urged, in case he has one son, he
accepts Christ as another; or he has two sons, and accepts Christ as a third, or he has
ten, and accepts Christ as the eleventh, in that case I will accept the inheritance.[57]

Following Augustine, Caesarius of Arles advised his congregation to "make a
part for Christ,"[58] that is, to include Christ as an heir.

Classical Roman law provided procedures whereby testators could disin-
herit children and next of kin, but such procedures were counterbalanced by
social disapproval of "undutiful wills" that overrode perceived rights and

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[55] Augustine, *Sermo* 86,10,11 (PL 38.528): "Filium amististi: non ergo amisisti sed prae-
misisti. . . . Mittatur ergo illi quo praecessit ille: ad rem suam venire non potest, res eius ad eum
ire potest. Vide cum quo sit. Si in palatio militaret filius tuus, et amicus imperatoris fieret, et
diceret tibi, vende ibi partem meam et mitte mihi: numquid invenires quid responderes? modo
cum imperatore omnium imperatorum, et cum rege omnium regum . . . est filius tuus: mitte illi.
Non dico necessarium habet ipse: dominus ipsius, apud quem est filius tuus, eget in terra."

[56] Augustine, *Sermo de disciplina Christiana* 8,8 (CCSL 46, p. 216).

[57] Augustine, *Sermo* 355 (PL 39,1571 *f.*) "Si quis . . . irascitur in filium suum et moriens
exhaeredat eum, si viveret non eum placarem? Non ei filium suum reconciliare deberem? Quo-
modo ergo cum filio suo volo ut habeat pacem, cuius appeto haereditatem? Sed plane, si faciat
quod saepe hortatus sum, unum filium habet, putet Christum alterum; duos filios habet, putet
Christum tertium; decem habet, Christum undeciumum faciat, et suscipio." Januarius, as is clear
from this sermon, was a member of Augustine's monastic community. While Januarius' children,
a son and a daughter, are mentioned in the sermon, his wife is not; perhaps she had died. This kind
of situation was envisaged in *Theodosian Code* 8,18,6 of 379 AD, where fathers whose wives have
died are prevented from alienating the property of their children.

[58] Caesarius *Sermo* 60 (CCSL 103, p. 263); W. Klingshirn, *Caesarius of Arles* (1994), 186 *ff.*
Salvian, *Ad ecclesiam* (C. Halm, ed. Berlin, 1877), VII:36–39, informs those who refuse to make
Christ an heir that they in turn will be excluded from the inheritance of Christ: "Non habebis cum
Christo partem, quem despexisti: cum his habebis quos ei praetulisti"; *cf.* Bruck, *Soziales
Erbrecht*, 105 *ff.* On the influence of Augustine and its limitations in early medieval Gaul, see
David Ganz, "The Ideology of Sharing: Apostolic Community and Ecclesiastical Property in the
Early Middle Ages," in Wendy Davies and Paul Fouracre, eds., *Property and Power in the Early
Middle Ages* (Cambridge, 1995), 17–29.

expectations of heirs, next of kin, and friends.[59] Imperial legislation likewise discouraged such wills, and Augustine's reaction to Januarius' "undutiful will" was in harmony both with this legislation and with general sentiment on such matters.[60] Nonetheless, the exercise of Christian charity did pose new legal problems. Bequests to the church had first occupied the imperial legislator in 321, when Constantine laid down that testators were free to bequeath whatever they wished to the church, for, so the emperor declared,

no greater debt is owed to human beings than that the pen recording their last desires, after which no further desire can be expressed, should be free and unconstrained.[61]

Although the freedom of testators to declare their last wishes was nothing new, subsequent legislation did seek to delimit Christian donations. In 370, a law pointedly addressed to Pope Damasus prevented widows and wards from making bequests to legacy-hunting clerics, thereby disappointing the expectations of their next of kin.[62] Expectations of these next of kin occupied the legislator once more in 390 AD, when, *inter alia,* the inheritances of children whose mothers had become deaconesses were protected from clerics who had insinuated themselves into the family circle. A deaconess was free to leave her own personal property as she saw fit, but

she shall not, under pretense of religion, give away any of the jewels and furnishings, or any of the gold, silver and ornaments of a noble household; rather, let her transfer these possessions in their entirety to children and next of kin or to anyone else meeting with her approval; and, once she comes to die, let her not declare as her heir any church or cleric or poor man.[63]

However, little consensus existed in these matters, in that only two months later, this law was explicitly rescinded: "It shall be removed from all records if it has already become known, and no litigant shall use it for his purposes, nor

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[59] Edward Champlin, *Final Judgment. Duty and Emotion in Roman Wills 200 B.C.-A.D.250* (Princeton, 1991), 15, 21*f.,* 112 *ff.:* See also, on community settlements of disputes arising from inheritance, Traianos Gagos and Peter van Minnen, *Settling a Dispute. Toward a Legal Anthropology of Late Antique Egypt* (Ann Arbor, 1994), 38 *ff.,* 46.

[60] W. Buckland, *A Textbook of Roman Law from Augustus to Justinian* (Cambridge, 1921), 324–29, on the *querela inofficiosi testamenti* and the *querela inofficiosi donationis.*

[61] Constantine's law, *Theodosian Code* 16,2,4 with J. Gaudemet, "La legislation religieuse de Constantin," *Révue d'histoire de l'église de France,* 33 (1947), 25–61, at 41–43, reprinted in his *Église et Société au Moyen Age* (London, 1980); on the Lex Falcidia, which guaranteed the heir one quarter of an estate, once debts and funerary expenses had been deducted, see *Institutes* II, 23; *Code of Justinian* 6,50; Zulueta, *Gaius* II, 112 *f.;* 117; Buckland, *Textbook,* 342 *f.;* Max Kaser, *Das römische Privatrecht,* vol. 1 (Munich, 1971), 756–7 and vol. 2 (Munich 1975), 561–2 (with full citations of sources); on pious bequests in general, B. Biondi, *Il diritto romano cristiano* (Milan, 1952–54), vol. I, 391–2 and vol. II, 207.

[62] *Theodosian Code* 16,2,20, 370 AD, prohibiting clerics and *continentes* from approaching widows and wards *(pupillae)* for purposes of acquiring legacies. The problem of legacy hunting *(captatio)* in itself was not new, see Champlin, *Final Judgments,* 87 *ff.*

[63] *Theodosian Code* 16,2,27.

shall any judge implement it."[64] Evidently, however, the law had become known, since it was included in the compilation of the *Theodosian Code.*

A different aspect of succession was addressed in 434 when the property of bishops, priests, deacons, deaconesses, and nuns who died intestate and without living heirs was judged to belong to the deceased's church.[65] In the same spirit, a novel of the emperor Marcian, dated 455 AD, upheld the will of the *clarissima* Hypatia, who had bequeathed her entire property to the priest Anatolius, to various churches, her freedmen, the poor, monks, and for the redemption of captives.[66] This novel was reiterated in the *Breviary of Alaric,* in which the author of the *interpretatio* appears to have noticed that a will of this kind would disinherit a person's heirs and thus wrote,

This law endows nuns, widows, deaconesses and all religious women with the power of bequeathing whatever they wish to the church, to bishops, priests, deacons and other clerics, by means of testament, testamentary disposition, oral declaration, codicils or any other written instrument. And if they desire to substitute other individuals to their heirs after the latters' death, they shall have that power.[67]

In short, the author of the interpretatio, while accurately summarizing the effect of Marcian's law, added a comment that pointed out the testator's heirs might still receive a life interest in part of an inheritance, even though after their deaths that inheritance would pass to other legatees.

Legislation by Justinian continued the reasoning of Marcian's novel of 455 AD. In 530, Justinian addressed a rescript to the Pretorian Prefect Julian ordering a testator's heirs to implement pious bequests "in every respect." "And if (the heirs) do not conform voluntarily, then the god-loving bishops of the place shall carry it out and enjoin the heirs to fulfil everything according to the will of the deceased."[68] Evidently, this law was not obeyed without rejoinder, for in the following year, Justinian returned to the issue in more specific terms by modifying the rule that prevented testators from leaving legacies to *incertae personae,* individuals of whom a testator could form no

specific concept, or from naming such indivduals as heirs. In addition, the emperor abrogated the Lex Falcidia in so far as it applied to pious bequests. The Falcidian law safeguarded for a testator's heir a minimum of one quarter of the estate after accounting for debts, burial expenses and manumissions of slaves who were to be freed under the will in question. As a result,

If anyone in deviation from the Lex Falcidia desires to leave his entire substance for the redemption of captives and makes the captives themselves his heirs, lest he seem to have instituted unspecified persons as his heirs, thereby leaving his decision subject to attack, we confirm that such an appointment of heirs by a testator's pious consideration should be valid and should not to be overruled.[69]

The rule, Justinian continued, was to apply not only to captives but also to the sick and the poor; and on their behalf, property thus willed was to be administered by bishops or other qualified individuals. Along with this right to receive legacies, the poor, the sick and captives, or rather, their ecclesiastical representatives, also acquired the full responsibilities and obligations of heirs, as Justinian went on to explain, once more referring to the workings of the Lex Falcidia:

In all circumstances, permission must be granted . . . both to bring suit and to collect debts, (the proceeds) to be expended on captives or the sick. For in that we gave them the right and title of heirs, but without the financial benefit of the Lex Falcidia, it follows that captives and the sick ought both to collect debts and to respond to creditors.[70]

Justinian subsequently returned to the issue once more in a novel, confirming that pious bequests did indeed override the rights of heirs as formulated in the Lex Falcidia:

If an heir does not carry out (bequests) left for pious causes, claiming that the property left to him is insufficient for the purpose, we decree that irrespective of any Falcidian

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[69] *Codex Justinianus* 1,3,48,1, 531 AD: "Si quis ad declinandam legem Falcidiam, cum desiderat totam suam substantiam pro redemptione captivorum relinquere, eos ipsos captivos scripserit heredes, ne videatur quasi incertis personis heredibus institutis iudicium suum oppugnandum reliquisse, sancimus huius talem institutionem pietatis intuitu valere et non esse respuendam."

[70] *Codex Justinianus* 1,3,48,4: "Licentia omnimodo danda . . . et actionem movere et debita exigere, ut in captivos vel in aegrotantes consumantur. si enim heredum eis et ius et nomen dedimus, sine Falcidiae tamen legis emolumento, necesse est eos et debita exigere et creditoribus respondere." I take the phrase "sine Falcidiae tamen legis emolumento" to mean that once the testator's heirs, that is, the next of kin who would inherit in case of intestasy are not protected by the Falcidian law which ensured that they would at the very least receive an unencumbered quarter of the inheritance (that is, the testator's debts had to be paid before the Falcidian quarter was assigned to heirs), these next of kin cannot be made responsible for the testator's debts. Justinian's innovation consisted of abrogating, in cases where pious bequests were at issue, the Falcidian quarter to which heirs were normally entitled. Such bequests now overruled the Lex Falcidia not only with regard to the quarter that had been assigned to heirs but also with regard to the prior payment of testator's debts. As a result, the *captivi* and *aegrotantes* became responsible for testator's debts without being able to appeal to the Lex Falcidia ("sine Falcidiae tamen legis emolumento") which arranged for debts to be paid before inheritances were distributed.

(rule) whatever is comprised in such an estate should, under the supervision of the most holy bishop of the place, accrue to the purposes for which it was bequeathed.[71]

These practical changes in the law went hand in hand with more theoretical, or be it theological, ones concerning the possible identities of heirs, since pastoral behests by Basil, Gregory of Nyssa, Gregory Nazianzen, and John Chrysostom, who all urged the faithful to include the poor or Christ among their heirs, in due course also entered the legislative sphere. In 477, the emperor Zeno had accepted as legally binding testamentary gifts

to the person of some martyr or apostle or prophet or the holy angels so as to build an oratory in the memory of him in whose name the pious gift is designated, provided only that (the testator) has defined the making of the memorial in accord with the imperial constitutions.[72]

In 530, Justinian returned to the issue because loosely drafted bequests for pious purposes were piling up in the courts. Testators were leaving gifts to Christ without making clear precisely which church was to benefit. Specifically, a certain individual, although "of distinguished lineage and eminent in literary and legal culture" had left a bequest to "the holy archangels and the venerable martyrs" without giving clear-cut instructions as to where the gift should be received. At the same time, an imprecisely drafted will of pious import from Pontus had come to the emperor's attention. As a result, Justinian reiterated certain general rules governing such bequests while reinforcing the testator's intentions. If, for example, the testator had left a bequest to Christ without naming a church, then the church of the place where the testator had died was to inherit. If, on the other hand, the testator had failed to designate the recipient of his pious gift in unambiguous terms but had been known in his lifetime to frequent a particular church, then that church would be his beneficiary. In short, "the truth," as Justinian described it, was to "prevail over what had been written."[73] Furthermore, "the truth" increasingly came to pre-

[71] Justinian, *Novellae* 131,12: "Si autem heres quae ad pias causas relicta sunt non impleverit, dicens relictam substantiam non sufficere ad ista, praecipimus omni Falcidia vacante quicquid invenitur in tali substantia proficere provisione sanctissimi locorum episcopi ad causas quibus relictum est."
  The Greek text makes clear that the heir will not benefit by the Falcidian quarter: "Εἰ δὲ ὁ κληρονόμος τὰ εἰς εὐσεβεῖς αἰτίας καταλελειμμένα μὴ πληρώσει, λέγων τὴν καταλειφθεῖσαν αὐτῷ περιουσίαν μὴ ἀρκεῖν εἰς ταύτας, κελεύομεν παντὸς τοῦ ἐκ τοῦ φαλκιδίου κέρδους σχολάζοντος ὁσονδήποτε εὑρηθῇ ἐν τῃ τοιαύτῃ οὐσίᾳ προχωρεῖν προνοίᾳ τοῦ ἁγιωτάτου τῶν τόπων ἐπισκόπου εἰς τὰς αἰτίας εἰς ἃς καταλέλειπται."

[72] *Codex Justinianus* 1,2,15: "εἰς πρόσωπον οἱουδήποτε μάρτυρος ἢ ἀποστόλου ἢ προφήτου ἢ τῶν ἁγίων ἀγγέλων, ὡς μέλλων εὐκτήριον οἶκον οἰκοδομεῖν εἰς μνήμην, οὗπερ ὀνόματι τὴν εὐσεβῆ διατυποῖ δωρεάν, τὴν αὐτὴν δωρεάν, εἰ μόνον τὴν πρᾶξιν τῶν ὑπομνημάτων κατὰ τὰς θείας διατάξεις ἐνεφάνισεν."
  On the the early evolution of the idea of Christ or the poor as heirs, see E. Bruck, *Kirchenväter und soziales Erbrecht* (Berlin, 1957), chs. 1–2; also, Peter Brown, *Power and Persuasion in Late Antiquity. Towards a Christian Empire* (Madison, 1992), 89–103.

[73] *Codex Justinianus* 1,2,25, 530 AD. *Novellae* 131,9 returns to the question of bequests to

vail over the rules of classical Roman law that governed testamentary bequests. Incertae personae could be named as heirs and receive legacies; the Lex Falcida no longer delimited pious bequests; and finally, in more general terms, the wish, *voluntas*, of the testator was to prevail over the technical working of the law of succession.[74]

V

The legislation on pious bequests by Marcian, Zeno, and Justinian demonstrates not only that the pastoral advice and exhortation "to make Christ an heir" was actually being followed but also that such advice resulted in legal changes which in turn changed society. A parallel evolution took place in the West, but here it was the opinion of Augustine, according to whom if a testator had living heirs, then Christ or the church ought to join their number rather than replace them, that prevailed. As a result, the spirit, if not the letter, of the Lex Falcidia continued to be observed, even though its provisions were adapted to a Christian context.

The *Breviary of Alaric* included a version of the *Sentences* of the jurist Paul, along with a series of interpretations. Regarding the Lex Falcidia, Paul had written that it, "along with the Senatus Consultum Pegasianum, decrees that once all debts and gifts to the gods have been deducted, a quarter of the remaining inheritance belongs to the heir."[75] The interpretation reformulated the rule into Christian terms by substituting the church for "gifts to the gods:"

The Lex Falcidia and similarly the Senatus Consultum Pegasianum decrees that, after inherited debts have been accounted for and gifts left in honour of god's churches have been set aside, a quarter of the inheritance belongs by right to the appointed heir before other (heirs).[76]

In Spain, the *Breviary of Alaric* was replaced by the new compilation of the *Liber Iudiciorum* in 654.[77] Like the *Breviary*, this work, although it does not

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Christ and the saints. *Novellae* 131,10 regulates gifts for the construction of oratories and similar matters, while *Novellae* 131,11 returns to legacies left to the poor and captives.

[74] For the priority of the *voluntas* of testators over the form of a written document, see especially *Theodosian Code* 2,24,1 (321 AD) with the interpretation from the *Breviary of Alaric*.

[75] Paul, *Sentences* (reproduced in the *Breviary of Alaric*, see G. Haenel, *Lex Romana Visigothorum*) 4,3,3 (also in J. Baviera, ed., *Fontes Iuris Romani Antejustiniani*, II (Florence, 1968), 4,3,2 p. 374): "Lex Falcidia itemque Senatus Consultum Pegasianum deducto omni aere alieno deorumque donis quartam residuae hereditatis ad heredem voluit pertinere." On gifts to the gods, see W. W. Buckland, *A Textbook of Roman Law from Augustus to Justinian* (Cambridge, 1926), 289.

[76] *Interpretatio* of Paul, *Sentences* 4,3,2 (from *Breviary of Alaric*): "Lex Falcidia similiter et Pegasianum Senatus Consultum facta hereditarii debiti ratione et separatis his quas in honorem dei ecclesiis relinquuntur, quartam hereditatis ex omnibus ad scriptum heredem censuit pertinere."

[77] On the circulation of the *Breviary of Alaric* in Spain and Gaul, see *Codigo de Alarico II. Fragmentos de la "Ley Romana" de los Visigodos conservados en un codice palimpsesto de la Catedral de León*, with introduction by F. de Cardenas and F. Fita, and epilogue by M. Rodriguez Gil (León, 1991), xiii *ff.*, 451 *ff.*; Michael McCormick, "An Unknown Seventh-Century Manu-

use Augustine's terminology of making Christ an heir with one's sons, did accommodate both the claims of the church and those of next of kin by allotting proportions to each. For example, King Chindaswinth restricted gifts to the church to one fifth of an estate and other gifts to one tenth, which abrogated an earlier lost law from the Code of Euric that had allowed testators to override the expectations of their children and grandchildren.[78] Just as formerly Roman jurisprudence and legislation had discouraged testators from producing "undutiful wills," so King Chindaswinth observed that his law was designed to preserve the bond of "natural piety" that ought to prevail among parents and their children and grandchildren, irrespective of grievances both serious and trivial.[79] Limitations likewise governed the right of women to dispose of their dowries and other gifts.[80] These legal injunctions are confirmed by a Visigothic notary's model for drafting a last will and testament, according to which the testator left a gift to the church where he was to be buried, but the remainder of his estate went to his sons in equal shares.[81] We may perhaps view this as an implementation of the Christian interpretation of the Lex Falcidia in the *Breviary of Alaric,* which assigned to the heir his share of an inheritance, once "gifts left in honour of god's churches" had been accounted for.

script of the Lex Romana Visigothorum," *Bulletin of Medieval Canon Law* (N.S.), 6 (1976), 1–13; Felipe Mateu Llopis, "El titulo X 'De Thesauris' Codicis Theodosiani Liber X del palimpsesto de León 'Legis Romanae Visigothorum fragmenta.' Comentario," *Boletín de la Real Academia de la Historia,* 183 (1986), 271–77; Ian Wood, "The Code in Merovingian Gaul," in Jill Harries and Ian Wood, eds. *The Theodosian Code. Studies in the Imperial Law of Late Antiquity* (London, 1993), 161–77.

[78] *Liber Iudiciorum* 4,5,1 with Zeumer's note *ad loc.*

[79] *Liber Iudiciorum* 4,5,1 (pp. 196–7, Zeumer): "Exheredare autem filios aut nepotes licet pro levi culpa inlicitum iam dictis parentibus erit, flagellandi tamen et corripiendi eos, quamdiu sunt in familia constituti, tam avo quam avie, seu patri quam matri potestas manebit." This view corresponds closely to the situation obtaining in the society described by Augustine in his sermons, see Brent Shaw, "The Family in Late Antiquity: The Experience of Augustine," *Past and Present,* 115 (1987), 3–51. See also Luis G. de Valdeavellano, "La cuota de libre disposición en el derecho hereditario de León y Castilla en la alta edad media," in his *Estudios Medievales de Derecho Privado* (Seville, 1977), 323–63.

[80] *Liber Iudiciorum* 4,5,2; 5,2,4.

[81] J. Gil, ed. *Miscelanea Wisigothica* (Seville, 1972), 94, *cf.* 81. See also page 93, line 73, where a wife is granted freedom to dispose of her dowry as she wishes—a right abrogated in *Liber Iudiciorum* 4,5,2; 5,2,4. A new edition of the Visigothic *formulae* (adding to their number) is by Angel Canellas López, *Diplomatica Hispano-Visigoda* (Zaragoza, 1979), see number 23 for the above mentioned notary's model of a will; see also numbers 78 and 90, which are models for wills in which husband and wife leave their estate to each other with no mention of pious bequests. In number 28, on the other hand, Bishop Vicentius of Huesca declares, "Te, sancta ecclesia Oscensis . . . in omni omnino re, tam quod de paternis quam de maternis munusculis mihi provenit, heredem te instituto, heresque mea ut sis decerno. Ceteri cetereve persone exheredes mihi sunt tote." This will was written by the deacon Stephen, his son. Its terms resemble those in the wills of some Frankish bishops, see note 83 below. For Saint Vincent as a bishop's heir, see Josep Corell-Ferran Grau, "L'epitafi de Justinià, bisbe de València (ca. 493–548)," *Analecta Sacra Tarraconensia,* 68 (1995), 5–15.

The evidence of Frankish wills tells a similar story in that the interests of next of kin continued to be respected, even when the testator was a member of the clergy. Bishop Remigius of Reims thus left his property to his church, to his nephew bishop Lupus, his grandson the priest Agricola, and to a number of other individuals. Caesarius of Arles, who in 542 bequeathed his entire property to his church and the convent of nuns that he had founded, did so with the explanation that he retained no possessions from his parents. In this way, he indicated that he was aware of expectations that might be aired by next of kin, even as he stated that such expectations were groundless.[82] In 615, similarly, Berthramnus, bishop of Le Mans, distributed his estate both among his extensive family and among various clerics and churches. This will was written by Berthramnus' son, the notary Ebbo, just as, a generation earlier, the will of bishop Vicentius of Huesca had been written by his son, the deacon Stephen, who was present at his dying father's bedside. Neither of these sons were mentioned in their fathers' wills, while both name as their heir the church over which they had presided. "I institute you, holy church of Huesca as my heir and decree that you shall be my heir; all other persons, men and women, shall be disinherited," Bishop Vicentius declared. In a similar vein, Bishop Berthramnus, "healthy in mind, body, and counsel but fearing the fragility of human life," dictated these words to his son:

When I the sinner Berthramnus will have left human things behind, and will have completed the time owed to nature, then you, holy church of Le Mans, together with the holy and venerable basilica of the apostles Peter and Paul, which I built in sight of the city at my own expense, for the defence of the city and the well-being of the people, you shall be my heirs, and I institute you as my heirs and order you to be such, and all others shall be disinherited.

In describing the properties that he was distributing among his heirs and legatees, Berthramnus differentiated between property that he had inherited from his family and therefore passed on to his kinsfolk and property that he had acquired in his own life time and by his own efforts. Various churches,

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[82] D. G. Morin, "Le testament de S. Césaire d'Arles et la critique de M. Bruno Krusch," *Révue Benedictine*, 16 (1899), 97–112, with an edition of the will of Caesarius; regarding Caesarius' intentions as expressed in his will, see William Klingshirn, *Caesarius of Arles. The Making of a Christian Community in Late Antique Gaul* (Cambridge, 1994), 252 ff. For the will of Remigius of Reims, see A.H.M. Jones, P. Grierson, and J. A. Crook, "The Authenticity of the 'Testamentum S. Remigii,'" *Révue belge de philologie et d'histoire*, 35 (1957), 1–18; the two versions of the text are in B. Krusch, ed. *Vita Sancti Remigii* (Monumenta Germaniae Historica, Scriptores rerum Merovingicarum III) (Berlin, 1896), 336–47. Ulrich Nonn, "Merowingische Testamente. Studien zum Fortleben einer römischen Urkundenform im Frankenreich," *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde*, 18 (1972), 1–129; Jean François Lemarignier, "Les actes de droit privé de Saint-Bertin au haut moyen âge. Survivances et déclin du droit romain dans la pratique franque," in his *Revue internationale des droits de l'antiquité*, 5 (1950), 35–72. See also, G. Spreckelmeyer, "Zur rechtlichen Funktion frühmittelalterlicher Testamente," in Peter Classen, ed. *Recht und Schrift im Mittelalter* (Vorträge und Forschungen, 23 (Sigmaringen, 1977), 91–113), and, in more general terms, P. Classen, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Altertum und Mittelalater* (Thessaloniki, 1977).

including the two that he named as heirs inherited this latter kind of property; while family property, excepting one single estate, went to kinsfolk. Berthramnus's successor, Hadoin, bishop of Le Mans, drew similar distinctions between family property, most of which he passed on to his kin, and property he had acquired in his own right, which he bequeathed to the "holy, venerable church of Le Mans; you shall be my heir; I institute you as my heir."[83]

Although most extant Frankish wills were made by ecclesiastics, there is one will from Paris by the lady Erminethrude, who in the late seventh century left a son as her principal heir and executor. Erminethrude made diverse pious bequests but left the bulk of her property to this son and principal heir, her daughter in law, and her granddaughter and grandsons. Another son had died, and a clause of the will deals with his portion of the inheritance:

For the curing of my soul, and for the sake of the good memory of my son Deorovaldus, I order that the settlement called Latiniaco which is located in the territory of Meldun, with its fields, the labourers belonging to it, the meadows, pastures, forests, and all its rights and boundaries, which settlement was part of the portion of this same my son Deorovaldus, shall be given in its entirety for his rest to the church of Saint Sinfurianus where he is known to be buried.[84]

Here we have the portion which Augustine had recommended should be "sent after" a deceased son; for, even though he himself would no longer require it, "His Lord is needy on earth."[85]

By this time, the custom of leaving bequests to the church, whether as a deceased child's portion or, more frequently, so that monks and nuns might pray for "the well-being of the kingdom, the state of the church" and the wel-

[83] The wills of Berthramnus and Hadoin of Le Mans were published by J. M. Pardessus, *Diplomata, chartae, epistolae, leges aliaque instrumenta ad res gallo-francicas spectantia*, vol. I (Paris, 1843), no. 230, pp. 197–215. Berthramnus, page 198:" Quando ego, suprascriptus Bertrannus peccator, ex rebus humanis excessero, debitumve naturae tempus explevero, tunc tu, sacrosancta ecclesia Coenomanica, una cum sancta ac venerabili basilica domni Petri et Pauli apostolorum, quam in conspectu civitatis, opere meo, pro defensione civitatis vel ad salubritatem populi aedificavi, haeredes mihi estote, haeredesque meos vos esse constituo ac jubeo, caeterive exhaeredes sint toti (vol. 2 [Paris, 1849], no. 300, 69–71.) Hadoin, page 69: "Sanus, Deo propitio, mente et corpore, sanoque consilio, metuens casum humanae fragilitatis . . . tu sacrosancta ecclesia venerabilis Cenomannis haeres mea esto, haeredemque meam te esse constituo." I have not been able to consult the more recent edition by G. Busson and A. Ledru, *Actus pontificum Cennomanis in urbe degentium* (Le Mans, 1901). For Vicentius of Huesca, see note 81 above.

[84] Pardessus *Diplomata* II, no. 452, pp. 255–8, at p. 257: "Item, pro remedium anemae meae, vel ex demandacione bonae recordationis fili mei Deorovaldi, villam cui vocabulum est Latiniaco sita in territurio Meldinse, cum campis, colonecis ad eadem pertinentes, cum pratis, pascuis, silvis, vel in omni jure et termino suo, quia in portione supramemorati filii mei Deorovaldi obvenit cum omni integritate baselicae Sancti Sinfuriani ubi sepulturam habere dinuscitur pro requiem eius dari praecipio."

[85] *Cf.* note 55 above. For another somewhat unusual will, also by a woman, see J. Guerout, "Le testament de Sainte Fare. Materiaux pour l'etude et l'edition critique de ce document," *Révue des études écclesiastiques*, 60:3–4 (1965), 761–821, with an edition of the will of Burgundofara, who divides her "portio" of the family property between her monastery and her siblings.

fare of the testator's or donor's soul, was ubiquitous in Western Europe. During earlier centuries individuals had likewise left charitable bequests, but those bequests had been made for the purpose of being remembered by the living, by friends, neighbours, and fellow citizens. Public buildings, statues, aqueducts, and commemorative banquets were regularly financed out of legacies left by testators in the hope that their names would live on in the dear and familiar world from which death would ineluctably part them. What was new about Christian testamentary giving was its orientation towards the future life and its focus on monastic houses, as well as the disadvantaged, widows, and the poor. In addition, since widows and the poor were not in a position to administer the gifts they were receiving, these gifts enhanced the social and political standing of the bishops who acted as their representatives.[86] Gifts for widows and the poor therefore helped to articulate not merely the power but also the ideals and aspirations of a new ruling class.

Such gifts, furthermore, redefined relationships among close kin; for the church, whether in its own right or in the person of the local saint, joined the family circle when it was addressed in wills as "my heir."[87] The rationale of these transactions, the obligation or necessitudo to which they responded was sin: As Bishop Leodegarius of Autun said in his will, "Alms extinguish sin."[88] It was thanks to the protection of the church seen as a corporate body[89] or of a powerful saint under whose protection a person wished to rest until judgement day[90] that the effects of sin would be annihilated. Sin was the bond which motivated the pledge, in the form of pious bequests designed to obtain the protection of these great patrons.

[86] On Roman philanthropic gifts, see Edward Champlin, *Final Judgements,* ch. 8; see also, for examples of testaments bequeathing such gifts, V. Arangio-Ruiz, ed. *Fontes Iuris Romani Antejustiniani III. Negotia* (Florence, 1972), numbers 53–55 (pp. 163–9), number 66 (pp. 193–8), of c. 570 AD. For land willed to an Egyptian monastery for the rest of the testator's soul and forgiveness of his sins, see Timothy S. Miller, *The Birth of the Hospital in the Byzantine Empire* (Baltimore, 1985).

[87] Pardessus, *Diplomata* I,81; 136; 197; II,69.

[88] Pardessus *Diplomata* II, 173–4: "eleemosyna extinguit peccatum." This is a sentiment with which Augustine would not have agreed (see *City of God* 21,22). Further, D. Pikhaus, "La vie, la mort et l'au delà dans les inscriptions latines paléochrétiennes," *Studia Patristica,* 15 (Berlin 1984), 233–7.

[89] For early evidence, see Giuseppe Bovini, *La Proprietà ecclesiastica e la condizione giuridica della Chiesa precostantiniana* (Milan, 1948).

[90] Peter Brown, *The Cult of the Saints. Its Rise and Function in Latin Christianity* (Chicago, 1981), 3ff.; S. MacCormack, "Loca Sancta: The Organization of Sacred Topography in Late Antiquity," in R. Ousterhout, ed. *The Blessings of Pilgrimage* (Urbana, 1990), 16f. See further, A. Gouillou, *Regionalisme et independance dans l'empire byzantin au VIIè siècle* (Rome, 1969), 272–7, inscription by bishop John of Ravenna of 731 AD, recording his gift of landed property to the monks of San Apollinare, effective on the date of his death: "Iohannes almus pontifex . . . qui cura pervigili aeterni premia regni fidus ut possideat aegenorum agmina praecant liminibus sacris, hoc sibi monumentum locavit, Apollenari sancto commendans pulvera membra quae surrectura credit, carnis resumpto vigore."

VI

At a different level, sin was the bond which welded together the new kinship network of spiritual parenthood whereby the natural family of parents and children was replicated by and interlocked with the spiritual family of god-parents and godchildren.[91] During the seventh century, a distinct terminology for this new kinship system first entered daily parlance: A child's father would describe this child's spiritual father as *compater*.[92] The resulting obligations and prohibitions have characterized European Catholic societies and their missionary descendants overseas until the nineteenth century, and in some instances beyond that time, in ways that Augustine and other citizens of the later Roman empire could not have envisaged.[93] To them, baptism was the remedy for original sin; also, it was a pre-requisite for church membership and therefore designated a person's potential entry into the City of God. As such, baptism was irrelevant to the Roman state or any other terrestial city. But, as we have seen, this is not how the issue came to be viewed either in Byzantium or Western Europe.

Augustine lived at a time when the existence and functioning of the secular state could still be taken for granted, extensive questioning of Rome's provi-dential significance notwithstanding. To live in society was an unarguable good. In heaven, as Augustine saw it, the saints would live a social life, and on earth, happiness was measurable by its social dimension.[94] It was for this reason that Augustine could without further explanation ask an envious per-son, "How will it be with regard to your happiness within society if the happiness of others troubles you?"[95] One could thus be certain of one's membership in and involvement with the terrestial city, of the diverse *necessi-*

[91]   Joseph H. Lynch, *Godparents and Kinship,* ch. 8; on the visual representation of networks of kinship, see Hermann Schadt, *Die Darstellungen der Arbores Consanguinitatis und der Arbores Affinitatis. Bildschemata in juristischen Handschriften* (Tübingen, 1982); E. Patlagean, "Une réprésentation byzantine de la parenté et ses origines occidentales," *L'homme. Révue française d'anthropologie,* VI (1966), 59–81; for the relevance of such depictions in matters of inheritance, see *Theodosian Code* 9,42,9.

[92]   See C. de Clercq, ed. *Concilia Galliae* (Corpus Christianorum 148A): p. 268, synod of Autun, 561/605 AD, canon 25, an abbot may not have *filios de baptismo,* nor monks *commatres;* p. 319, Canones Augustudunenses 5, monks may have no compatres.

[93]   S. W. Mintz and E. R. Wolf, "An Analysis of Ritual Co-Parenthood *(compadrazgo),*" *Southwestern Journal of Anthropology,* 6 (1950), 341–68; Julian Pitt-Rivers, "Spiritual Kinship in Andalucia," in his *The Fate of Shechem or the Politics of Sex: Essays in the Anthropology of the Mediterranean* (Cambridge, 1977); Hugo G. Nutini and Betty Bell, *Ritual Kinship. The Structure and Historic Development of the Compadrazgo System in Rural Tlaxcala* (Princeton, 1980–84). An extended discussion of the workings of spiritual kinship in the Cuzco region of Peru may be found in Juan Pérez Bocanegra, *Ritual, formulario e institución de curas, para administrar a los naturales de este Reyno, los santos Sacramentos . . .* (Lima, 1631), 32 *f.,* 59 *f.,* 69 *f.*

[94]   Augustine, *City of God* 19, 5: "Quod autem socialem vitam volunt esse sapientis, multo amplius adprobamus. Nam unde ista Dei civitas . . . vel inchoaretur exortu vel progrederetur excursu vel adprehenderet debitos fines, si non esset socialis vita sanctorum?"

[95]   Augustine, *Sermo de disciplina Christiana* 7,7 (CCSL 46, p. 214): "Quomodo enim erit socialis felicitas tua quem torquet felicitas aliena?" *Cf. Serm.* 9,9,13 (PL 38,85): The virtuous person lives, "securus et innocens in dei dilectione et humana societate."

tudines which anchored one's life in this world. With regard to one's future participation in the City of God in its day of glory, on the other hand, Augustine had recurrent doubts.[96] Christian observance, to Augustine, therefore, was an expression of the love which might define a person's orientation towards the City of God; but Christian observance was in no sense a contract with God whereby one might become entitled to enter the kingdom of heaven.

However, this austere view was not widely shared even among those who studied Augustine's works carefully. Thus, Caesarius of Arles on the one hand reiterated much of Augustine's pastoral advice but, on the other hand, felt that a person who had lived a virtuous and penitent life could reasonably expect to obtain his "eternal reward."[97] It was not only in pastoral counselling, and in terms of the world to come that the City of God acquired increasingly concrete dimensions. That is, the preoccupations of the City of God as articulated in the institutional framework of the church underpinned preoccupations of secular society; and in the process these latter were redefined and changed. Society, whether secular or ecclesiastical, was held together in part by systems of penalties and exclusions. In the *Theodosian Code*, the *Code of Justinian*, and likewise in the post-Roman legal codes of Gaul and Spain, those who were punished by the state or excluded from civic society were the same people who were punished by or excluded from the church, such as the unbaptized or those who had rejected their Catholic baptism. A law issued in Rome in 407 thus described adherence to the teachings of Manichees and Donatists as a "public crime," a term also applied in the later fifth century to pagan practices. As another law expressed it, the common well-being, *salus communis,* lay in "what is useful for the holy Catholic church."[98] A degree of coercion was for Augustine an ineluctible aspect of the care of souls, and Christian rulers, both Roman and Germanic, did not hesitate to participate in the exercize of such coercion. As Isidore of Seville expressed it:

Offices of power are necessary within the church only so that those things which a priest is unable to achieve by means of the word of teaching might be commanded by means of power through the fear of punishment.[99]

Isidore derived this view of the competence of the state in religious matters from Augustine. Simultaneously, Isidore idealized Spain as a mother of he-

[96] *City of God* 21,15: "Ne quisquam se debet ab isto ad illum transire confidere nisi cum ibi fuerit ubi temptatio nulla erit"; *Sermo* 348 (PL 40, 1524–26); Brown, *Augustine of Hippo* (London, 1967), 432.

[97] Caesarius, *Sermo* 60,1; 64,4; 65,2–4 (CCSL 103).

[98] *Codex Justinianus* 1,5,4 (407 AD); 1,11,8 (c. 472 AD); also *Novellae* 109, preface (541 AD); *Theodosian Code* 16,5,47 (409 AD); Roger Collins, *Early Medieval Spain. Unity in Diversity 400–1000* (London, 1983), 129 *ff.* The Jews presented the most intractable difficulty of all to the Christian sense of *salus communis;* as J. M. Wallace-Hadrill wrote: "The trouble was that Judaism met Christianity half-way: they shared the Old Testament." See his *The Frankish Church* (Oxford, 1983), 390 *ff.;* J. Juster, "La condition legale des Juifs sous les rois visigoths," in *Etudes d'histoire juridique offertes à Paul Frédéric Girard* (Paris, 1913), 275–335.

[99] Isidore of Seville, *Sententiae* 3,51.4 (PL 83, 723); see further Marc Reydellet, *La Royauté dans la littérature latine de Sidoine Apollinaire à Isidore de Séville* (Rome, 1981), 537 *ff.,* 554 *ff.*

roes and thought of the Visigothic kingdom in terrestial and political, not in spiritual, terms, just as Augustine had thought of Rome as a secular state among other such states, all of them devoid of any providential mission.[100] "We are not saved," Isidore declared in his pithy fashion, "by some king, but by the king our Saviour," a statement echoed later by Beatus of Liebana.[101] For the time being, the debate about Rome and providence had come to an end. Isidore could thus return to Cicero's definition of a people as being "a human multitude brought together by consent about law and by harmonious concord"[102] but without Augustine's qualification which had shifted the criterion of concord from law to love. Yet, the Visigothic state which Isidore knew resembled Augustine's later Roman empire much more than it did Cicero's ideal of the Roman republic, or even the Roman republic in which Cicero actually lived, because the laws and institutions with which both Augustine and Isidore were familiar were oriented by ecclesiastical criteria and ecclesiastical support.[103]

The *civitas terrena,* that is, the state seen in late antique Christian terms, was held together by an intimate network of necessitudines, family ties, patterns of inheritance, accepted modes of behaviour, that both created and sustained its institutions. In replicating and expanding these institutions in spiritual kinship, in ecclesiastical rights of inheritance and in a reformulated moral code, the *civitas dei* passed on to the state not only a reflection of its own supernatural and theological goals but also the different scope of its competence: A competence directed, in the words of the legislator, toward the control of sin much more than to the fostering of perfection. The control of sin

[100] Cristobal Rodriguez Alonso, ed. *Las historias . . . de Isidoro de Sevilla* (Leon, 1975), where he comments on the valour and piety of the Goths but mentions no supernatural mission. See also Isidore, *Etymologiae* 9,3,1–3, listing kingdoms from Augustine's *City of God* 18,2; note J. Fontaine, *Isidore de Séville et la culture classique dans l'Espagne wisigothique* (Paris, 1959), 444f., 459f., 798f., who views Augustine's influence on Isidore as being confined, for the most part, to matters of astronomy and mathematics, "Jamais . . . d'une manière différente d'une source paienne." Reydellet, *Royauté* 514 ff., 572: "Nous assistons à la liquidation définitive de toute transcendance politique . . . le roi garde seulement un pouvoir de répression des méchants."

[101] Isidore, *Etymologiae* 7,2,9; Beatus of Liebana, *Commentarius in Apocalypsin,* E. Romero-Pose, ed. (Rome, 1985), Prologue to Book II, p. 173.

[102] Isidore, *Etymologiae* 9,4,5: "Populus est coetus humanae multitudinis iuris consensu et concordi communione sociatus."

[103] For Spain, see Claudio Sánchez Albornoz, *Estudios Visigodos* (Rome, 1971), 242 ff.; on cooperation of church and state at a time of crisis, *Liber Iudiciorum* 2,5,19 with Council of Toledo XVI (693 AD), in Jose Vives, ed. *Concilios Visigoticos e Hispano-Romanos* (Barcelona, 1963), canon 10, pp. 511f.: "Quicumque amodo ex nobis vel cunctis Hispaniae populis qualibet meditatione vel studio sacramentum fidei suae quod pro salute patriae gentisque Gothorum statu vel incolumitate regiae potestatis pollicitus est, violaverit . . . anathema sit in conspectu Spiritus Sancti et martyrum Christi, atque ab ecclesia catholica quam periurio profanaverit efficiatur extraneus." *Cf.* L. A. Garcia Moreno, *Prosopografia del reino visigodo de Toledo* (Salamanca, 1974), 121. On the "alliance of crown and clergy" in Francia, see David Ganz, "Bureaucratic Shorthand and Merovingian Learning," in Patrick Wormald, Donald Bullough and Roger Collins, eds., *Ideal and Reality in Frankish and Anglo-Saxon Society. Studies presented to J. M. Wallace-Hadrill* (Oxford, 1983), 58–75.

did not require the civic and "active virtues of society" of this world which Gibbon admired so deeply, and the "abstinence and chastity" that Gibbon frowned upon, did, even if not widely practiced, provide new grounds on which social, cultural and political consensus could be built. In this sense, Christianity, to use Gibbon's words, "broke the violence of the fall, and mollified the ferocious temper of the conquerors." Much recent and not so recent research has investigated the multifarious ways in which Christianization affected Roman and post-Roman societies by changing and modifying existing modes of living, feeling, and thinking. What I have tried to describe here is a somewhat different aspect of Christianization. On the one hand, I have shown how Christian ideas, which themselves changed over time, gradually brought about behaviours and perceptions that would have been quite simply unthinkable at an earlier period. In this sense, the seventh century was profoundly discontinuous with the fourth; and this was the case not merely because the Western Roman empire had come to an end in the interim. On the other hand, however, these new behaviours and perceptions remained anchored in concepts of belonging, of relationship, kinship and obligation, that reached far back into the Roman past, irrespective of the question of decline and fall.[104]

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[104] Jacques Fontaine and J. N. Hillgarth, eds. *Le septième siècle: changements et continuités. Actes du Colloque bilatéral franco-britannique tenu au Warburg Institute les 8–9 juillet 1988* (London, 1992).