

## Augustine's *Epp.* 77-78 (A Scandal in Hippo): Microhistory and Ordeal-by-Oath

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### *Introduction*

This paper is part of a larger project on ordeals at whose birth Paul Hyams officiated.<sup>1</sup> Classical and Medieval ordeals have lived separate scholarly lives for a long time. The former largely ignored; the latter usually assessed as 'barbarian' or 'Germanic'. Ordeals are, of course, universally attested in cultures that are not in contact, while at the same time have a local and culture-specific history. In the larger project I aim to connect antiquity with the Middle Ages and to explore the contribution of Christianity to the development of various medieval ordeals. Several types of ordeals may be Christian in origin and have been generated by a very specific type of thinking. They are 'bottom-up' strategies of sufferers and the disempowered, and directly related to judicial torture. This is also in part a 'before' and 'after' story about how irrational methods of proof became increasingly acclimatized in Late Antiquity.<sup>2</sup>

### *The Dossier*

The story in Paul's honor starts with a dossier in Augustine's letter-collection. I will juxtapose *Epp.* 77-78 with other texts they do not necessarily get to converse with. They have a role in the ordeals project; they are worth space in the history of sexuality. They repay a micro-historical approach and will need to be worked into the story of Augustine's own intellectual development.

### *Truth*

It all starts with truth. 'What is truth?' What is *the* truth? And continues with justice. Men have always sought ways to find 'the mind's construction in the face'. Think of the popularity of *Lie to Me* on U.S. television. Dr Cal Lightman (nice name!) studies body language and facial expressions and puts his skills at the service of justice. The technique

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- 1 This piece is dedicated with love and gratitude to Paul, who taught me so much over fourteen happy years at Cornell, and made legal history come alive for me. Early versions of this paper were delivered before audiences in Illinois, Frankfurt, and Vienna. Throughout, *Ep.* refers to *Epistola* and *Epp.* *Epistolae*.
  - 2 The opposite of the process that happened in Archaic Greece according to Kurt Latte, *Heiliges Recht: Untersuchungen zur Geschichte der sakralen Rechtsformen in Griechenland*, (Tubingen: J. C. B. Mohr (P. Siebeck), 1920), p. 5. Manfred Kraus, 'Gottesurteil – Beweismittel – Stilfigur. Funktion und Stellenwert des Eides in der antiken Rhetorik', in *New Chapters in the History of Rhetoric*, ed. by Laurent Pernot (Leiden: Brill, 2009), pp. 427-43 (p. 430) considers the theory no longer tenable.

is supposedly based on modern behavioral science. Think too about mechanical methods, such as lie-detector tests or chemical ones: sodium pentothal ('truth serum').<sup>3</sup> These methods all involve the body of the subject or defendant. Judicial strategies included separate interrogation of witnesses (Susanna and the Elders) or legal stratagems (*Judicium Salomonis*). Torture too was a time-honored method that likewise involved the subject's body, if not his consent. Already in the ancient world opinions were divided about whether it was effective.

### *Ordeals*

Ordeals are methods of irrational proof, best deployed in situations where other methods have failed. Deities or elemental powers 'speak' to declare innocence or guilt in disputes. In the project I'll be discussing a variety of ordeals, including ordeals by fire (hot iron and boiling water), swallowing ordeals (the *Probebissen* and Eucharistic ordeal), ordeal by poison (such as the Bitter Waters), ordeal by water ('witch ducking'), ordeal-by-execution,<sup>4</sup> the current topic, 'ordeal-by-oath on relics'.

### *An Augustinian Case-Study*

Classists rarely get to do micro-history; case studies, however, are sometimes possible. And that is what this is. Its sources have not been effectively united before. Its major known actors include three bishops, Augustine, Ambrose, and Paulinus of Nola, marking three apices of a 'Mediterranean Triangle'. Lines of travel, communication, and developing ritual between Hippo in N. Africa, Milan in N. Italy, and Nola in Campania created the force field. The story is a drama in three acts: Hippo triggered it, Milan lay in its past, and Nola straddled both its past and its future. Much of the story remains shrouded in the mystery that obscures the secrets of the human heart. Sex and lies will have their place. But 'truth' also matters, for this case is the first documented example of Christian ordeal-by-oath on the relics of the saints, a means of determining truth that would eventually be known as 'canonical purgation'.<sup>5</sup>

3 Hypnosis too.

4 See D. Shanzer, 'Beheading at Vercellae: What is Jerome, *Ep.* 1, and why does it matter?', in *Zwischen Alltagskommunikation und literarischer Identitätsbildung. Kulturgeschichtliche Aspekte lateinischer Epistolographie in Spätantike und Frühmittelalter*, ed. by Gernot Michael Müller (Stuttgart: Franz Steiner, forthcoming).

5 Jean Gaudemet, 'Les Ordeals au Moyen Age: doctrine, législation et pratique canoniques', in *La Preuve: Deuxième partie: Moyen âge et temps modernes*, (Bruxelles: libr. encyclopédique, 1965), pp. 99-135 (p. 108) for the use of *purgatio canonica* for the oath after the ninth century. Henry Charles Lea, *The Duel and the Oath. With Additional Original Documents in Translation* by Arthur C. Howland, Edited with an Introduction by Edward Peters (Philadelphia: University of Pennsylvania Press, 1974), pp. 21-33, insists that in almost all cases oaths involved compurgation. At p. 22 he sees purgation by a single person's oath as introduced by the church. At p. 33 he discusses 'the Wager of the Law' or canonical compurgation. For the first examples, see Nicole Herrmann-Mascard, *Les reliques des saints: formation coutumière d'un droit* (Paris: Klincksieck, 1975), pp. 239-40.

I hope to provide a clearer picture of the very specific origins of ecclesiastical ordeal-by-oath, some insight into Augustine's problems with an awkward type of sexual scandal, some new light on the development of Augustine's theology, and — I hope — evidence to support my more general thesis, namely that many of the most important forms of ordeal that would be used in Western Europe arose within a specifically Christian context by what may be a characteristically Christian tactic.

### *Ordeal and Oath*

But first 'ordeal' and 'oath'. The ordeal is a procedure that aims to elicit the immediate verdict of a deity (the 'judgment of god'), while leaving punishment to a judge. The oath elicits the participation of a god and, if necessary, punishment at some future time.<sup>6</sup> Both are so-called 'non-rational' methods of proof. One could divide these proofs into words (oaths) v. deeds (various types of physical procedures), and classify them according to whether the test is uni-lateral or bi-lateral, whether the results (verdicts) are immediate or not, and according to who enforces punishment (man or god).<sup>7</sup>

Oaths and ordeals are clearly related.<sup>8</sup> The assertory oath ('I did/didn't do X') obviously has a close relationship to the ordeal, for the substance of the oath's assertion ('I did/didn't do X') is the cause of an ordeal. The guard in Sophocles' *Antigone* was already pairing oaths and ordeals.<sup>9</sup> The oath has been derived from the ordeal, and scholars have suggested both that oaths have replaced ordeals<sup>10</sup> and that ordeals have replaced oaths.<sup>11</sup> Or

6 Rudolf Köstler, 'Der Anteil des Christentums an den Ordalien', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung*, 2 (1912): 208-248 (p. 213).

7 Hence torture is a method of proof involving force that elicits immediate results that are punished by man. It can be distinguished from the ordeal because the latter is often offered rather than imposed and because torture involves no appeal to the knowledge of higher powers. The oath is a method of proof involving words; its results are delayed, and it is enforced by gods. The ordeal by water and the *Proebissen* are special cases, because in both cases failure of the ordeal can become immediate punishment. The oath on relics is also a special case because it expects an immediate verdict. The punishment can come from man or god.

8 Walther Müller-Bergstrom, 'Gottesurteil', in *Handwörterbuch des deutschen Aberglaubens*, ed. by E. Hoffmann-Krayer and Hanns Bächthold-Stäubli (Berlin: W. de Gruyter, 1930), pp. 994-1064 (pp. 1003-04) delineates three possibilities: that the ordeal was primary and that the oath is an atrophied ordeal; that the ordeal is an expanded oath (one might say 'an oath with teeth'); that they share a common magical origin and developed side-by-side. Henri Lévy-Bruhl, 'Reflexions sur le serment', in *Études d'histoire et du droit privé offertes à Pierre Petot*, ([Paris]: Libr. générale de droit et de jurisprudence: Ed. Montchrestien [etc.], 1959), pp. 385-96 (pp. 389-90).

9 Sophocles, *Ant.* 264-67.

10 Rudolf Hirtzel, *Der Eid: Ein Beitrag zu seiner Geschichte*, (Leipzig: S. Hirtzel, 1902), pp. 176-82, 210-14, discussing Hesiod, *Theogony*, 785 ff.

11 In some instances, however, one can see a reverse process: the introduction of ordeals where oaths *cannot* be used as, for example, in the case of the *ignotus* with no oath-helpers, or where oaths have failed, when parties may be willing to perjure themselves lightly (*Liber Constitutionum*, 45).

that the oath is an ordeal.<sup>12</sup> But there are also crossovers, such as the 'ordeal-like' oath. And the oath at a martyr's grave, because it seems initially to have been expected to elicit an immediate miracle, is an example of one.<sup>13</sup>

*Oaths in legal practice versus oaths 'on the ground'*

While promissory oaths were standard in Roman law, the unilateral disculpatory/purgative assertory oath is not found in written Roman legal sources. There is only one rare example of such an oath from the distant past.<sup>14</sup> But disculpatory oaths to various deities were institutionalized to some extent by religious practice in many parts of the pagan world.<sup>15</sup>

*Pagan Ordeal-by-Oath*

The oath combined with ordeal-by-water, to take one example, was attested from the Hellenistic period at the Lacus Palicus in Sicily. We have divergent accounts from Polemo (an Hellenistic historian) preserved by Macrobius,<sup>16</sup> from Diodorus Siculus (first century

12 Lévy-Bruhl, 'Reflexions sur le serment', p. 390.

13 Dominique Barthélemy, 'Diversité des ordalies médiévales', *Revue Historique*, 280 (1988): 3-25 (p. 9).

14 The ambiguous oath-form used by Tremellius Scrofa to purge himself of the charge of theft of a sow, for example, in Macrobius, *Saturnalia* 1.6.30 *Tremellius vero Scrophæ cognominatus est eventu tali. is Tremellius cum familia atque liberis in villa erat. servi eius cum de vicino scrophæ erraret, subreptam conficiunt: vicinus advocatis custodibus omnia circumvenit nequa efferri possit: isque ad dominum appellat restitui sibi pecudem. Tremellius qui ex vilico rem comperisset, scrophæ cadaver sub centonibus collocat, super quos uxor cubabat; quaestionem vicino permittit. cum ventum est ad cubiculum, verba iurationis concipit: nullam esse in villa sua scropham, 'nisi istam', inquit, 'quæ in centonibus iacet', lectulum monstrat. ea facetissima iuratio Tremellio Scrophæ cognomentum dedit. On this see Adhémar Esmein, 'La Poursuite du vol et le serment purgatoire', in *Mélanges d'histoire du droit et de critique: droit romain*, (Paris: L. Larose et Forcel, 1886), pp. 233-44.*

15 E.g. the ordeals-by-oath for theft that were carried out at the Lacus Palicus in Sicily. See Macrobius, *Saturnalia* 5.19.20; also Apollo's adjudication of perjury in Autun. See *Panegyriques Latins* 6.21.7 *Iam omnia te vocare ad se templa videantur præcipueque Apollo noster, cuius ferventibus aquis periuria puniuntur, quæ te maxime oportet adisse*. See Edouard Galletier, *Panegyriques latins*, (Paris: Les Belles Lettres, 1949), p. 31, n. 3, for the localization in Autun. This panegyric to Constantine dates to 310. There is also evidence for the alleged supernatural qualities of hot springs in Solinus 4.6-7 (localized in Sardinia) *Fontes calidi et salubres aliquot locis efferuescunt, qui medelas afferunt aut solidant ossa fracta aut abolent a solifugis insertum uenenum aut etiam ocularias dissipant aegritudines. 7 Sed qui oculis medentur, et coarguendis ualent furibus; nam quisquis sacramento raptum negat, lumina aquis adtrectat; ubi periurium non est, cernit clarius, si perfidia abnuit, detegitur facinus caecitate, et captus oculis admissum fatetur*. See J. H. Croon, 'The Palici: An Autochthonous Cult in Ancient Sicily', *Mnemosyne*, 5 (1952): 116-129 (p. 120), for the spring of Zeus Asbameus at Tyana, described in Philostratus *Vita Apollonii* 1.6. There the punishment took the form of disease.

16 In connection with the exegesis of *Aen.* 9.585.

BC), and Ps(eudo)-Aristotle.<sup>17</sup> Two natural cauldrons exhibited volcanic phenomena: poisonous sulphureous exhalations, geysers, and roaring. Oaths were taken there, and immediate punishment of perjurers followed:<sup>18</sup> variously described as blinding (Diodorus)<sup>19</sup> drowning (Macrobius)<sup>20</sup> or burning (Ps.-Aristotle).<sup>21</sup> It is impossible to know exactly how the ordeal worked, but at first probands may have held the edge of the cauldrons and pronounced their oaths. If they fainted, they might fall into the boiling water and so perish.<sup>22</sup> Later on, tablets with the oaths inscribed on them may have been substituted for the probands themselves.<sup>23</sup> This is a strictly local ordeal, connected to the special uncanny, chthonic features of the landscape.<sup>24</sup> Likewise, presumably, Apollo's punishment of perjurers with burning water at Autun.<sup>25</sup> When we come to the first Christian example of such a procedure, things will be somewhat different. So we need to cross the Mediterranean from Sicily to Africa.

*Hippo: 'It is true that there will be no lack of temporal scandals'*

In Matthew 24.10 Jesus had predicted scandals and hatred in the Christian community. And in the early fifth century, scandal erupted in Augustine's church at Hippo. Two letters

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- 17 On the Palici, see Gustav Michaelis, *Programm womit zu der öffentlichen Prüfung der Zöglinge des vitzthumschen Geschlechtsgymnasiums und der damit vereinigten Erziehungsanstalt am 14., 15., 17. März ergebenst einladet der Director Prof. D. Georg Bezzenberger, ... Inhalt... I. Die Paliken, ein Beitrag zur Würdigung altitalischer Culte, von D. Gustav Michaelis. II. Nachrichten über die Anstalt, vom Director*, (Dresden: Druck von E. Blochmann und Sohn, 1856); Edward Augustus Freeman, 'The Palici and their Lake', in Freeman, *The History of Sicily from the Earliest Times* (Oxford: OUP, 1891-4), pp. 517-30 ; Konrat Ziegler, 'Palikoi', in *Paulys Realencyclopädie der classischen Altertumswissenschaft* XVIII-3, *Palatinus bis Paranatellonta* [PWRE], ed. by Georg Wissowa and Wilhelm Kroll (Stuttgart: A. Druckemüller, 1949), pp. 100-23; Croon, 'The Palici', pp. 116-29.
  - 18 Polemon, Fr. 83 παραβάτης δὲ γενόμενος τῶν θεῶν ἐμποδῶν τελευτᾷ. Diod. 11.89 συντόμως ἢ τοῦ δαιμονίου κόλασις ἀκολουθεῖ. Macrobius, *Sat.* 5.19.21 *nox in lacu amittebat vitam falsus iurator*.
  - 19 Diod. 11.89 τινὲς γὰρ τῆς ὀράσεως στερηθέντες τὴν ἐκ τοῦ τεμένου ἀφοδὸν ποιοῦνται.
  - 20 Macrobius, *Sat.* 5.19.21. Note the drowning threatened at the Orkos river by Arrian, *Bithynika frag.* 26 Roos Eustath. ad *Iliad.* 2.754, p. 336, 12. Κατὰ τὴν ἱστορίαν τοῦ Ἀρριανοῦ καὶ Βιθυνίας ποταμὸς Ὀρκος ὄνομα, ὃς φρικωδέστατος ὄρκων τοῖς ἐκεῖ ἐνομιζέτο πρὸς βίαν εἰς τὰς δίνας ἔλκων τὸν ἐπιορκόν, εἰ μὴ δρομῶ ἐξεπῆδησεν.
  - 21 Ps.-Aristotle, *De mirabilibus auscultationibus* 843b Bekker τὸν δ' ἄνθρωπον πῖμπρασθαι.
  - 22 The text of Polemo alludes euphemistically to purification to be carried out in the event of something 'untoward'. (*nearon*).
  - 23 This interpretation from Gustave Glotz, *L'ordalie dans la Grèce primitive* (Paris: A. Fontemeing, 1904), pp. 82-85. The *pinakia* appear in Ps.-Aristotle.
  - 24 The framework is thus pagan, and admits of holy places. On which see Robert A. Markus, 'How on Earth Could Places Become Holy? Origins of the Christian Idea of Holy Places', *Journal of Early Christian Studies*, 2 (1994): 257-271 (pp. 258-59).
  - 25 See n. 15 above.

(Augustine's *Epp.* 77 to two Catholic laymen, Felix and Hilarinus and 78 to the Church at Hippo) reveal a church confronted by an embarrassing and damaging conflict.<sup>26</sup> They concern the unpleasant case of Augustine's priest Boniface and a monk called Spes. Augustine wrote with considerable discretion (as have pussyfooting critics, who have *many* ways of not saying what the letters are about!),<sup>27</sup> but reading between Augustine's tactful (and obfuscatory) words we can discern the contours of the dispute.<sup>28</sup>

Spes seems to have made a homosexual advance to Boniface, for Boniface sensed his 'unclean and unchaste urge' and was unwilling either to consent or to be silent.<sup>29</sup> Spes, however, alleged that *Boniface* had the bad conscience, and, because he (Boniface) had been 'unable to corrupt his (Spes') chastity', set out to harm his reputation.<sup>30</sup> Augustine wished to believe his own priest,<sup>31</sup> Boniface, and to let the matter slide until further evidence emerged that might permit him to expel the other man.<sup>32</sup> But Spes wished for priestly advancement,<sup>33</sup> and Augustine was unwilling to ordain a man under a cloud or inflict him on a fellow-bishop. Spes, disadvantaged by the *status quo*, agitated for Boniface to be removed. Eventually others, including laity, supported him.<sup>34</sup>

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26 Dennis E. Trout, *Paulinus of Nola: Life, Letters, and Poems* (Berkeley & Los Angeles: University of California Press, 1999), pp. 235-37, remains the best treatment.

27 F. Van der Meer, *Augustine the Bishop: The Life and Work of a Father of the Church* (London: Sheed and Ward, 1978), p. 540, characterizes the offence as 'a certain serious misdemeanor'. Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: CUP, 1999), p. 207 mentions 'delicate situations'. Kevin Uhalde, *Expectations of Justice in the Age of Augustine*, (Philadelphia: University of Pennsylvania Press, 2007), p. 104, says no more than 'made allegations'.

28 One of them is considered *perditus* and the reputation of the other is either *mala* or *dubia* in others' eyes, even if his conscience is in fact clean.

29 *Ep.* 78.2, p. 333.15 *quia, cum sensisset alterius motum impudicum et inmundum, nec consentire voluit nec tacere.*

30 *Ep.* 78.2, p. 333.18 *si autem male sibi conscius, quod suspicari non audio, voluit alterius existimationem laedere, cum eius pudicitiam contaminare non posset.*

31 *Ep.* 13\* shows us Augustine debriefing one of his priests after a heterosexual scandal. He explored the mind of the man as much as he could as a man. *Quantum potui ut homo exploravi hominis mentem.* Note the virtually identical language used in *Ep.* 77.2 *nec dilucide iudicare homo de occultis hominum potui.*

32 *Ep.* 78.3, p. 334.7-10.

33 *Ep.* 78.3, p. 334.10-11.

34 *Ep.* 77.2 *quis ego sum, ut audeam dei praevenire sententiam in delendo vel supprimendo eius nomine, de quo nec suspicari temere mali aliquid episcopus debui.* See André Mandouze, *Prosopographie de l'Afrique chrétienne (303-533)* (Paris: Editions du Centre national de la recherche scientifique, 1982), p. 559, for the identification of Hilarinus 2 as a citizen of Hippo, and p. 417 for Felix 19 as his fellow-citizen.

The correspondence shows severe division and distress. Augustine was pressured both by groups and individuals who wanted Boniface stricken from the clergy. The situation so threatened the reputation of his church in the eyes of the lay community that he even defensively let fly a cheap shot, 'that when a married woman is found to be an adulteress, they don't throw out their wives or accuse their mothers'. (*Ep.* 78.6) Forced to take action, Augustine chose a means (*aliquid medium*) that was in fact a novel compromise,<sup>35</sup> namely to send both parties to a sacred place 'so that the more alarming works of God might compel one to confess either through punishment or fear'.

### *Homosexuality*

The nature of the scandal rendered it intractable: For homosexuality within the Church, proves a surprisingly elusive subject in Late Antiquity — particularly in Augustine. This may be the only passage in his writings that unquestionably alludes to the practice in a contemporary historical context.<sup>36</sup> Augustine frequently confronted *heterosexual* misbehavior and was familiar with its pastoral care.<sup>37</sup> Homosexuality within the church was different<sup>38</sup>— hence perhaps the recourse to supernatural proof.<sup>39</sup>

### *Whence the idea?*

Milan, one of our apices, gave Augustine the idea.<sup>40</sup> He states that a thief was revealed through his perjury in Milan at the tomb of Gervasius and Protasius. Yet he thought he

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35 *Ep.* 78. 3 *eligi aliquid medium* is Augustine's description of his decision. *Ep.* 77.2 *secundum placitum eorum* suggests that Boniface and Spes assented.

36 *Ep.* 211.14 (an admonitory letter to nuns) may be another: *non autem carnalis sed spiritalis inter uos debet esse dilectio; nam quae faciunt pudoris inmemores etiam feminis feminae iocando turpiter et ludendo, non solum a uiduis et intactis ancillis christi in sancto proposito constitutis sed omnino nec a mulieribus nuptis nec a uirginibus sunt facienda nupturis.*

37 See Danuta R. Shanzer, 'Some Treatments of Sexual Scandal in (Primarily) Later Latin Epistolography', in *In Pursuit of Wissenschaft: Festschrift für William M. Calder III zum 75 Geburtstag*, ed. by Stephan Heilen, R. Kirstein, and et al. (Hildesheim: Georg Olms Verlag, 2008), pp. 393-414 (pp. 393-408). Also Possidius *Vita Augustini* 26 for Augustine's precautions against trouble with women in monasteries.

38 For example not, in this period, susceptible to the physical methods of proof that were used on women to test virginity or to the activity evidenced by a pregnancy.

39 There remains, however, the interesting question of whether the priest accused of sex with a woman in Augustine, *Ep.* 13\* was threatened with an ordeal or not: *tamen quantum potui ut homo exploravi hominis mentem non semel, sed saepius cum illo agens et terrenis de iudicio dei ut mihi confiteretur ...*

40 Trout, *Paulinus of Nola*, p. 236, attributes the decision to 'the promotional efforts of Paulinus'. At p. 237, he suggests that Paulinus would have sent an accurate report.



would more easily receive an accurate account of the outcome of Spes and Boniface's test from Nola in Campania.<sup>41</sup> At any rate, a local resolution was impossible.

### *Locality v. Ubiquity*

Here is why. Christians were wrestling with the paradox (locative v. a/utopian)<sup>42</sup> expressed by Augustine in his open letter. While God was everywhere, miracles seemed to occur in some places, but not in others. Though Africa had many martyrs' tombs, he had never heard of such miracles there. This paradox was the result of the historical development of the early Church. Christianity should, logically, be a 'a/utopian' religion. Yet it developed *loca sancta* ('sacred places'). How? Why? Robert Markus has argued that the early Christian church in order to maintain its identity as a 'church of the martyrs' established their cults.<sup>43</sup> For various good reasons related to memory these cults were local. 'Our martyr — Our history'. It was these cults that drove the development of *loca sancta*, not the reception of Jerusalem as a holy place. But the development of the cult of the saints (as opposed to local martyrs) caused controversy to erupt in the late 380s and in the 390s-400s about the ethics of the cult of relics: their quasi-magical properties, invention, distribution, translation ('mobility'), their partition.<sup>44</sup>

With twenty-twenty hindsight, relics seem a given, but from a synchronic perspective we should see the fracture, dissension, and development for what they were. Their cult came into being amidst innovation and controversy. Promoters of local relics had to argue, first that providence had apportioned the saints around the world, and second that 'their' saint was special and made their place special — but not so special that the magic efficacy couldn't be shared by partition and gifts to other deserving places.<sup>45</sup> In other words 'here

41 *Ep.* 78.3, p. 336.1-3. Pierre Courcelle, 'Les lacunes de la correspondance entre Saint Augustin et Paulin de Nole', *Revue des études anciennes*, 53 (1951): 253-300 (p. 266), suggests that he was alluding to problems with communication with Milan owing to Alaric's invasion of 401/03. But the issue may instead be Augustine's relations with Milan (where Simplicius seems to have been dead by 400 and succeeded by Venerius) as opposed to his trust in Paulinus. See Francesco Lanzoni, *Le Diocesi d'Italia dalle origini al principio del secolo VII (An. 604): Studio critico* (Faenza: Lega, 1927), p. 1018, for Simplicianus, and 1019 for Venerius, his successor, who is said by Paulinus of Nola to be a *novus episcopus* in *Ep.* 20.3 (27 November 400/29 June 401).

42 See Markus, 'How on Earth Could Places Become Holy?', p. 264, using Smith's terminology. 'Atopian' would be preferable, since it avoids the confusion with the more common 'utopian'.

43 Markus, 'How on Earth Could Places Become Holy?', pp. 267-69. This is a somewhat different explanation from that of Herrmann-Mascard, *Les reliques des saints*, pp. 23-29, who sees more a natural extension of respect for the remains of the dead and the *cura pro mortuis*.

44 See Markus, 'How on Earth Could Places Become Holy?', p. 260, on the very specific problems of place.

45 For a very clear statement of these positions from an insider, See Paulinus of Nola (Paul. Nol.) *Carm(en)* 19.45-53, 76-83, 152-55, 164-65 and 317-28 (for translation).



now', but also 'potentially there', or indeed 'potentially anywhere'. That said, shrines usually developed documentable specialties.<sup>46</sup> Augustine, as we see, was becoming a somewhat puzzled 'localist'.

### *Augustine and Miracles*

The letter thus relates to Augustine's theology of miracles and his views about whether they are produced by relics. He changed, from a man who was as skeptical as a modern Bollandist<sup>47</sup> to the celebrator of the miracles of St Stephen in the *City of God*.<sup>48</sup> Ep. 78 (usually dated to the early 400s) clearly falls when Augustine had begun to believe in miracles performed by relics, but before their cult was truly 'landed' in North Africa.<sup>49</sup> The test had to be performed, but could not be carried out locally. We may thus *perhaps* rule out a pardonable desire on Augustine's part simply to toss the hot potato out of Hippo.

### *Christian Ordeal by Oath*

But the Boniface episode also seems to be the earliest securely attested example of Christian *purgatio canonica*, or 'ordeal by oath'.<sup>50</sup> By the sixth century the process might

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46 Pace the rhetoric of Victoricius of Rouen, *De laude* 11.

47 V. Saxer, *Morts, martyrs, reliques en Afrique chrétienne aux premiers siècles: les témoignages de Tertullien, Cyprien et Augustin à la lumière de l'archéologie africaine*, (Paris: Editions Beauchesne, 1980), p. 242. Crucial evidence lies in *Retract.* 13.7 (On the *De vera religione*) *Item quod dixi, Nec miracula illa in nostra tempora durare permissa sunt, ne anima semper visibilia quaereret, et eorum consuetudine frigeret genus humanum, quorum novitate flagravat, verum est quidem: non enim nunc usque cum manus imponitur baptizatis, sic accipiunt Spiritum sanctum, ut loquantur linguis omnium gentium; aut nunc usque ad umbram transeuntium praedicatorum Christi sanantur infirmi; et si qua talia tunc facta sunt, quae postea cessasse manifestum est. Sed non sic accipiendum est quod dixi, ut nunc in Christi nomine fieri miracula nulla credantur. Nam ego ipse quando istum ipsum librum scripsi, ad Mediolanensium corpora martyrum in eadem civitate caecum illuminatum fuisse jam noveram, et alia nonnulla, qualia tam multa etiam istis temporibus fiunt, ut nec omnia cognoscere, nec ea quae cognoscimus, enumerare possimus.*

48 See for example Pierre Courcelle, *Recherches sur les Confessions de Saint Augustin* (Paris: E. de Boccard, 1950), pp. 140-49; Van der Meer, *Augustine the Bishop*, pp. 539-57; Markus, 'How on Earth Could Places Become Holy?', p. 360. There is more bibliography in Trout, *Paulinus of Nola*, p. 237, n. 32.

49 By the time Augustine wrote *De Civitate Dei* 22.8 there was even a *memoria* of Gervasius and Protasius in a villa called Victoriana, less than thirty miles from Hippo. And there at least one highly dramatic exorcism occurred.

50 Lea, *The Duel and the Oath*, pp. 33-37; Peter Brown, *Augustine of Hippo: A Biography*, (Berkeley and Los Angeles: University of California Press, 2000), p. 191, rightly noted, 'When faced with an insoluble quarrel between two members of his clergy, on which the whole community was divided, he would send both to a shrine in Italy, where perjuries were detected by Divine judgement: we are entering into the medieval world of the ordeal'.

usually involve *compurgation* supported by oaths of oath-helpers<sup>51</sup> — as well as the purgation of the individual by his own oath. And here there are distinctions to be drawn, for the Boniface case did not involve a compurgative oath, nor a simple unilateral purgative oath, but a *bilateral* one: two potentially guilty parties faced the judgment of God (*iudicium dei*). This bi-laterality would have important implications.

So far the first apex of the sacred triangle and the main act of the drama in Hippo. But Augustine's personal history extended to Milan, the second apex. For there lay the episode that had helped him decide what to do with the troublesome pair, Boniface and Spes.

#### MILAN

##### *Invention*

In 385-386 Ambrose, Bishop of Milan, had been at loggerheads with the predominantly Arian (homoean) imperial court, a famous ecclesiastical power-crisis.<sup>52</sup> Let it suffice to note that in June 386, when Ambrose needed sacred authority to bolster his position, he dug and 'found' it — in the form of the bodies of the martyrs Protasius and Gervasius.<sup>53</sup>

##### *Supernatural attestation of relics*

But, when an ambitious bishop excavates bones in an atmosphere of mistrust, who can say whose, or indeed *what* they are?<sup>54</sup> The newly found relics needed authentication. The method of choice then was far from forensic — they were tested on demoniacs. For the

51 As early as Greg. Tur. *Decem Libri Historiarum* 8.9, Fredegund defended the legitimacy of Chlothar II by compurgation with three bishops and three hundred nobles. Compurgation can be regarded as a logical extension of the responsibility of the immediate family for felonies or losses occasioned by one member of it. See Lévy-Bruhl, 'Reflexions sur le serment', p. 390. But it could also be seen as testing the community as a social animal and taking the temperature of the water. If compurgators take their responsibilities seriously then more oaths of more honest men are collectively worth more. But even if they do not and are prepared to perjure themselves (There are clear complaints about such situations in, for example, *LC*, 45) the judicial system derives from it a sense of what the market can bear. Henri Lévy-Bruhl, *La preuve judiciaire: étude de sociologie juridique* (Paris: Marcel Rivière, 1964), p. 29, says that the object of judicial proof is for the interested party to obtain ratification, 'l'homologation de la collectivité'. How bald-faced will the lying be? How much can what cannot be proven, but is likely to be true or known to be true, be ignored? Lévy-Bruhl, 'Reflexions sur le serment', p. 391, sees compurgation as having more to do with character and networks than with facts — and hence for him it is an *indirect* mode of proof.

52 An explicit echo *in re* the cult of relics is to be found at Paul. Nol. *Carm.* 19.324-28.

53 Angelo Paredi, *Saint Ambrose: His Life and Times* (Notre Dame: University of Notre Dame Press, 1964), p. 253; Neill B. McLynn, *Ambrose of Milan: Church and Court in a Christian Capital* (Berkeley and Los Angeles: University of California Press, 1994), p. 211. Hippolyte Delehaye, *Les origines du culte des martyrs*, (New York: AMS Press, 1980), pp. 75-78, esp. 77, against those who see no more than a *habile mise en scène*.

54 For the satirical 'what', see Jerome, *Contra Vigilantium* 5 *illud nescioquid*.

demon within was tortured by the divine presence of the relics and would 'confess'. That confession was tantamount to attestation or acclamation. The ultimate source was Mark 5.7 *et clamans voce magna dicit quid mihi et tibi Iesu Fili Dei summi adiuro te per Deum ne me torqueas*. Here we see both the torture (*torqueas*) and the attestation. The demon knew who Jesus was.

The discourse of torture and confession was familiar. In a wicked satirical coup Jerome cast his enemy, Vigilantius, the Gallic monk who opposed the cult of relics, as a demoniac himself. The demon in him that forced him to blaspheme against relics would be tortured by what Vigilantius had dared to call 'the vilest of dust', and would confess!<sup>55</sup> Thus relics were tested on demoniacs<sup>56</sup> and attested by the demons.<sup>57</sup> For the latter, when tortured by a genuine relic, acclaim the holy presence.<sup>58</sup>

#### *Other virtues of the relics*

Protasius' and Gervasius' relics immediately wrought two miracles of their own. The first is fairly commonplace: they healed a blind man.<sup>59</sup> The second is more interesting and relevant to our case. For Augustine said, 'For we knew at Milan at the tomb of the saints, where the demons confessed in a miraculous and terrifying way, that a certain thief, **who had come to that place in order to deceive by swearing falsely**, was forced to confess

55 *CVigilantium 5 inhabitatores Vigilantii and 10 Spiritus iste immundus qui haec te cogit scribere, saepe hoc vilissimo tortus est pulvere, immo hodieque torquetur, et qui in te plagas dissimulat, in ceteris confitetur. Nisi forte in morem gentilium impiorumque, Porphyrii et Eunomii, has praestigias daemonum esse confingas, et non vere clamare daemones; sed sua simulare tormenta.*

56 Paulinus, *Vita Ambrosii* 14 *Obsessa etiam corpora a spiritibus immundis curata, summa cum gratia domum repetebant.*

57 Ambrose, *Ep.* 22.23 was sensible of being accused of having 'usurped the voice of demons'. *Sed non ego ad suffragium martyrum usurpo vocem daemoniorum.*

58 See Ambrose, *Ep.* 22.16 *atque in tantum amentiae prodeunt, ut negent martyrum merita, quorum opera etiam daemones confitentur. Sed hoc non mirum; siquidem tanta est incredulorum perfidia, ut tolerabilior sit diaboli plerumque confessio. Dicebat enim diabolus: Jesu, Fili Dei vivi, quid venisti ante tempus torquere nos (Matth. 8.29)? Et cum haec audirent Judaei; ipsi tamen Dei Filium denegabant. Et nunc audistis clamantes daemones, et confitentes martyribus quod poenas ferre non possint, et dicentes: Quid venistis ut nos tam graviter torqueatis? Et Ariani dicunt: Non sunt isti martyres, nec torquere diabolus possunt, nec aliquem liberare; cum tormenta daemonum ipsorum voce probentur, et beneficia martyrum remediis sanatorum, et absolutorum indiciis declarentur and Ep. 22. 22 Non accipio a diabolo testimonium, sed confessionem. Invitus dixit diabolus, sed exactus et tortus. (col. 1026A) Quod nequitia supprimit, extorquet injuria. Cedit diabolus plagis, et adhuc cedere nesciunt Ariani.*

59 Paulinus, *VAmbrosii* 14 *Caecus etiam Severus nomine, qui nunc usque in eadem basilica quae dicitur Ambrosiana, in quam Martyrum corpora sunt translata, religiose servit; ubi vestem martyrum attigit, statim lumen recepit.*

his theft and to return what he had taken'.<sup>60</sup> Clearly a thief had initiated a purgative oath and failed the test.

### *A fateful inversion*

It is at Milan in 386 that we can first see *in one place* the genesis of what I see as the crucial intellectual inversion from 'relics-are-attested/revealed-by-miracle' to 'relics-attest/reveal-by miracle'. The bones of the Milanese martyrs were attested by demoniacs (as relics) and soon revealed the perjury of a thief.<sup>61</sup> Relics were tested by supernatural methods of proof.<sup>62</sup> The most notable such story is the Invention of the True Cross by Helena, a narrative contemporary with our developments<sup>63</sup> and — *curioser and curioser* — attested in the West by two of our own principals,<sup>64</sup> Ambrose<sup>65</sup> and Paulinus of Nola.<sup>66</sup>

### *Birth of the oath on relics*

The oath on relics emerged in the third quarter of the fourth century as phase two of the process by which the authenticity of relics was itself first tested by thaumaturgy, the provocation of a miracle. Which relic is real? Is it indeed a martyr's relic? There are always two sides: believers and doubters. The former are usually Nicene Christians, the latter can

60 *Ep.* 78.3 *Nam et nos novimus Mediolani apud memoriam sanctorum, ubi mirabiliter et terribiliter daemones confitentur, furem quemdam, qui ad eum locum venerat ut falsum jurando deciperet, compulsum fuisse confiteri furtum, et quod abstulerat reddere.*

61 Augustine's eyewitness testimony can date from no later than 387.

62 Martyrs' bones must even undergo ordeal by water and a miracle to prove their authenticity. See the *Passio Maximiani et Isaac* 14-16, where the pagans mix the bones of martyrs with those of criminals and toss them all into the sea. The sea returns the bones of the martyrs. Herrmann-Mascard, *Les reliques des saints*, p. 134, gives some examples of relics tested by ordeal by fire. At Gregory of Tours (Greg. Tur.) *DLH* 7.12 St. Martin's bones miraculously survive fire in time of war.

63 The story also appears in Socrates, *Historia Ecclesiastica* 1.17 and Sulpicius Severus (Sulp. Sev.) *Chronicorum Libri duo* 2.34. For *testimonia* to the evolution of the legend, see A. Frolov, *La relique de la Vraie Croix: recherches sur le développement d'un culte*, (Paris: Institut français d'études byzantines, 1961), pp. 155-58, and now Jan Willem Drijvers, *Helena Augusta: The Mother of Constantine the Great and the Legend of Her Finding of the True Cross*, (Leiden and New York: E. J. Brill, 1992), pp. 96-117.

64 Rufinus, *Historia Ecclesiastica* 1.7-8, has a dying woman brought in to test the three crosses. She recovers when brought in contact with the True Cross.

65 *De obitu Theodosii* 46, where, interestingly, there is no miracle. Helena finds the *titulus* with its proper cross. See Drijvers, *Helena Augusta*, pp. 111-12, for some of the variants that separate Ambrose's version from others'. He is agnostic about omission versus a different source.

66 Paulinus of Nola, *Ep.* 31 (to Sulpicius Severus), esp. 31.5, where Helena orders digging and three crosses are found. The Lord inspires Helena to have a cadaver brought in to test the crosses. The Cross occasions a resurrection miracle. Drijvers, *Helena Augusta*, p. 123, suggests that he may have been told the legend by Melania.

be pagans, Jews, or Arians. At Milan Ambrose's Arian rivals refused to believe in the relics and accused the bishop of skullduggery, indeed of hiring sham demoniacs to fake it.<sup>67</sup> Once a relic's own authenticity had been proved by miracle, it could then act as the *res sacra* sworn upon,<sup>68</sup> with the power to discern truth and cause a miracle,<sup>69</sup> a player in ordeal-by-oath.

*Nola: What was expected to happen?*

But now south to Nola, our third apex, where Saint Felix's cult was promoted by the ascetic aristocrat, priest, and bishop, Paulinus. There are no specific allusions to prior examples of Felix's adjudication of ordeals-by-oath in the existing Paulinian corpus.<sup>70</sup> And there is no

67 Paulinus, *VAmbrosii* 15 *Tamen intra palatium multitudo Arianorum cum Justina constituta deridebat tantam Dei gratiam, quam Ecclesiae catholicae Dominus Jesus meritis martyrum suorum conferre dignatus est: venerabilemque virum Ambrosium narrabat pecunia comparasse homines, qui se vexari ab immundis spiritibus mentirentur; atque ita ab illo, sicut et a martyribus se torqueri dicerent. Sed hoc Judaico ore loquebantur Ariani, suppres scilicet eorum; illi enim de Domino dicebant, quoniam in Beelzebuth principe daemoniorum ejicit daemonia: isti de martyribus, vel de Domini Sacerdote loquebantur, quod non Dei gratia, quae per ipsos operabatur, immundi spiritus pellerentur; sed accepta pecunia se torqueri mentirentur. Clamabant enim daemones: Scimus vos martyres; et Ariani dicebant: Nescimus esse martyres. Jam hoc et in Evangelio legimus, ubi dixerunt daemones ad Dominum Jesum: Scimus te, quia sis Dei Filius; et Judaei dicebant: Hic autem unde sit, nescimus. Sed non hic testimonium accipitur daemonum, sed confessio; unde miseres Ariani vel Judaei, ut quod confitentur daemones, illi negent. Also Ambrose, Ep. 22.22 *Et Ariani dicunt: Nescimus, nolumus intelligere, nolumus credere. Dicunt daemones martyribus: Venistis perdere nos; Ariani dicunt: Non sunt daemonum vera tormenta, sed ficta et composita ludibria. Audivi multa componi, hoc nemo umquam fingere potuit, ut daemonem se esse simularet. Quid illud, quod ita exagitari eos videmus, quibus manus imponitur? Ubi hic locus fraudi est? ubi suspicio simulandi?* This episode was so famous that it would subsequently be recreated (or transferred) to the Vandal Kingdom, where the players became Eugenius and Cyrila. I have wondered, however, whether if, in fact, Ambrose did pay fakers to simulate demonic possession, they did not slip up in carrying out their assignment by calling out 'Ambrose' rather than 'Gervasius and Protasius'. See Augustine, *De Cura pro mortuis* 17.21 *Nam Mediolani apud sanctos Protasium et Gervasium martyres, expresse nomine, sicut defunctorum quos eodem modo commemorabant, adhuc vivum daemones episcopum confitebantur Ambrosium, atque ut sibi parceret obsecrabant, illo aliud agente, atque hoc cum ageretur omnino nesciente.**

68 Lévy-Bruhl, 'Reflexions sur le serment', pp. 387-88, for different examples of such *res*, 'material elements that play a symbolic role'. For the term, see Herrmann-Mascard, *Les reliques des saints*, p. 236.

69 Later sources tell us that perjurers collapsed unconscious or suffered strokes, were struck dumb, began to make animal-like noises, or died. See for example, Greg. Tur. *Liber in gloria martyrum* (GM) 19, GM 38 (for Pancratius), *Liber in gloria confessorum* (GC) 28, and *Liber de passione et virtutibus S. Iuliani martyris* (VSJ) 19. Gregory the Great (*Dialogia* 4.6.1) speaks generally of the effect of the presence of the dead saints: *periuri veniunt et daemonio vexantur.*

70 *Carm.* 14 (397) trans. P. G. Walsh, *The Poems of St. Paulinus of Nola* (Westminster, Md.: Newman Press, 1975) details activities prior to Paulinus' arrival. See also Courcelle, 'Les lacunes de la correspondance', p. 266. Teresa Piscitelli Carpino, *Paolino di Nola: Epistole ad Agostino*, (Napoli & Roma: Libr. Ed. Redenzione, 1989), p. 43, plausibly suggests that Augustine must have received a communication in a letter or poem about ordeal-by-oath at Nola.

extant epigraphic attestation.<sup>71</sup> But hints in Paulinus' hagiographical poetry show us Felix's activities.<sup>72</sup> And one can find some guidance about what Augustine hoped might happen.

One example.<sup>73</sup> In *Carmen* 19 (January 405) Paulinus tells how Felix caught a man who had stolen a gold cross from his shrine and caused him to confess. Nothing is described that could not be the result of natural circumstances. There are no miracles. But what happened is *processed by Paulinus as wondrous*. Psychological deterrence by the saint made the thief fail to make an effective getaway,<sup>74</sup> and a full confession was elicited in his place of confinement within the church.<sup>75</sup> The saint used guilt and fear to elicit a confession. The analogy is not perfect, for theft and its proof are far more detectable than homosexual seduction. One could be caught red-handed with the goods. But the language Paulinus uses ('But if we seek to scrutinize more thoroughly from every aspect the whole chain of the unfolding order of events, especially where the crime escaped detection and was then revealed and manifest, we shall see that Felix with hidden hand performed the wondrous works of God'<sup>76</sup>) might give us some idea of what Augustine meant by 'the more alarming works of God that might compel one to confess either through punishment or fear'. Eventually in Gregory of Tours we see what was expected to happen, depending on whether the judgment were instantaneous<sup>77</sup> or delayed.<sup>78</sup>

71 Pace Uhalde, *Expectations of Justice*, p. 104, citing Antonio Ferrua, 'Graffiti di pellegrini alla tomba di San Felice', *Palladio*, 13 (1963), 17-19. None of the graffiti published by Ferrua has anything to do with oath-swearing. Some concern fulfillment of vows (*vota*) to the saint, something quite different. In agreement Pasquale Testini, 'Note per servire allo studio del complesso paleocristiano di S. Felice a Cimitile (Nola)', *Mélanges de l'École Française de Rome. Antiquité*, 97 (1985): 329-71 (p. 365).

72 He expelled demons. See *Carm.* 14.21-43 (January 397) and *Carm.* 18.97 *unde igitur tantus circumstat limina terror? . . . quanam manus urget/daemonas invitosque rapit*; *Carm.* 23.45-59 and 82-98 (January 401); *Carm.* 26.307-23 (January 402). There was physical contact with his relics. *Carm.* 18.125-29. On one memorable (and funny) occasion he restored stolen cattle to an angry peasant. For the saint sharing a laugh with God, see *Carm.* 18.316 *et sua cum domino ludens convitia risit*. He was seen as omniscient. *Carm.* 18 (January 400). Note however that he did not bring the thief to justice. In *Carm.* 19.522 ff. (January 405) he immobilized a thief for eighteen days and compelled him to confess on his feast-day.

73 Mentioned by Sigrid Mratschek-Halfmann, 'Multis enim notissima est sanctitas loci: Paulinus and the Gradual Rise of Nola as a Center of Christian Hospitality', *Journal of Early Christian Studies*, 9 (2001): 511-53 (pp. 525-26). I see no clear evidence that Augustine necessarily knew the *Natalicia* other than *Carm.* 23, which Paulinus sent him. They are adduced as *comparanda*, not sources.

74 *Carm.* 19.538-573.

75 *Carm.* 19.534 *tunc ergo ut mente recepta/ ipse suum facinus reus atque obstacula coepit/ mirandis narrare modis fassusque per illos/octo decemve dies*.

76 Paul. Nol. *Carm.* 19.595-98, trans. P. G. Walsh, *The Poems of St. Paulinus of Nola*, p. 151.

77 Greg. Tur. *VSJ* 19.2 immediate paralysis.

78 Greg. Tur. *VSJ* 39.2 delayed 'ordinary' misfortunes.



*Damasus cleared?*

More intriguingly (and earlier) Damasus (Pope 366-384) may have been cleared of some slander through the agency of Felix, and *possibly*, but by no means certainly, by the same method used by Augustine.<sup>79</sup> His votive inscription was set up at Nola and he journeyed there.<sup>80</sup> Whether the help was received over the sacred airwaves or 'on location'<sup>81</sup> remains unclear. While it is often assumed that Damasus needed to clear himself of a murder charge (an *actio de vi*),<sup>82</sup> if what occurred was expurgation by oath, a charge of *adultery* seems far more likely.<sup>83</sup> Damasus like his protégé Jerome was painted by contemporaries as a legacy-hunter whose game was rich widows — and ugly rumors were inevitable. This pope, after all, was known as the 'matron's ear-scraper /Q-tip' or 'gold-digger'.<sup>84</sup>

- 79 See Giovanni Battista de Rossi, *Inscriptiones Christianae Urbis Romae septimo saeculo antiquiores* (Roma: Romae, ex officina Libreria pontificia, 1857-88), pp. 190-91, for Damasus' epigram: *Corpore mente animo pariterque et nomine Felix... 5 te duce servatus mortis quod vincula rupi/ hostibus extinctis fuerant qui falsa locuti/Versibus his Damasus supplex tibi vota rependo*. Trout, *Paulinus of Nola*, pp. 43-44 and 236 puts the Damasus episode in the 360s. He does not specify the cause, but suggested an *actio de vi*, perhaps murder relating to the events of 366. So likewise Tomas Lehmann, 'Eine spätantike Inschriftensammlung und der Besuch des Papstes Damasus an der Pilgerstätte des hl. Felix in Cimintile/Nola', *Zeitschrift für Papyrologie und Epigraphik*, 91 (1992): 243-81 (p. 265) 'hinlänglich bekannt'. Now Uhalde, *Expectations of Justice*, p. 28, rightly decides for fornication.
- 80 Lehmann, 'Eine spätantike Inschriftensammlung', p. 252. Marcellus' sixth-century *Vita Felicis* has an account of Damasus' pilgrimage to Nola. The latter helps break the tie set up by Testini, 'Note per servire allo studio', pp. 365-7, who was unable to decide between Felix at Nola or Felix of Nola at Rome, and raised the possibility of some other Felix.
- 81 A literal (and personal) interpretation of vv. 3-4 *Qui ad te sollicitis venientibus omnia praestas/Nec quemquam pateris tristem repedare viantem* suggests that Damasus traveled.
- 82 Lehmann, 'Eine spätantike Inschriftensammlung', p. 265, citing Ernst Schäfer, *Die Bedeutung der Epigramme des Papstes Damasus I. für die Geschichte der Heiligenverehrung* (Roma: Ephemerides Liturgicae, 1932) and Erich Caspar, *Geschichte des Papsttums von den Anfängen bis zur Höhe der Weltherrschaft. Bd. 1, Römische Kirche und Imperium Romanum* (Tübingen: Mohr, 1930), i, pp. 201-9, connects it with the slanders of the anti-Pope Ursinus and the murder-trial that started in 371.
- 83 The *Liber Pontificalis* 39 records an accusation of adultery brought by two deacons, Concordius and Callinicus. Damasus was allegedly cleared by a synod of forty-four bishops. Also *Collectio Avellana I, CSEL 35.1*. 13.9 (of 378/9, Gratian and Valentinian II to Aquilinus, Vicarius Urbis) *hinc illi insectatores sanctissimae sedis non solum dei numine, quod satis erat, sed etiam iudiciorum examine exploratum mentis sanctissimae virum, ut etiam divo patri nostro Valentiniano est comprobatur, turpissimis calumniis episcopum Damasum inquietare non veriti, postquam desperaverunt posse percelli, populum, pro quo ille divititati obses est, inquietant*. See J. N. D. Kelly, *Jerome: His Life, Writings, and Controversies* (London: Duckworth, 1975), p. 149, for Isaac the Jew bringing the charge. He cites Coelestinus Martini, *Ambrosiaster, de auctore, operibus, theologia*, (Romae: Pontificium Athenaeum Antonianum, 1944), pp. 154-59.
- 84 For Damasus' activities with *matronae*, see *Coll. Avell.* p. 4.5 *quem (sc. Damasum) in tantum matronae diligebant, ut matronarum auriscalpius diceretur*. This is the only example of *auriscalpius* (m.); the word is normally neuter. It is difficult not to imagine an insinuation of venality. The pun on *aurum* and *auris* is used by Lucilius, Fr. 1193 *Marx Nequam aurum est; auris quovis vehementius ambit*.



*What actually happened?*

So far so good. A homosexual scandal in Africa was handled by a bishop who had close physical and religious ties with Milan and who had been in correspondence with Paulinus at Nola since 396. In Milan a revelation of perjury by relics is attested. In Nola the Pope may have been cleared of some slanderous charge, perhaps adultery, by Felix.

Can one dig a little deeper now into the genesis of the scandal at Hippo? These letters can be made to 'talk' to yet other texts. Ordeals are meant to expose lies. And Augustine wrote two treatises on lying: the *De Mendacio* (dated 394/5) and the *Contra Mendacium* (dated 420).<sup>85</sup> The former has been studied as philosophical theology by Paul Griffiths.<sup>86</sup> But historians pass it by. No one has seriously explored what the *De Mendacio* is, nor why Augustine wrote it.

Some of it clearly overlaps with Augustine's controversy with Jerome over the 'lie' in Galatians 2.11-14.<sup>87</sup> But *pace* its editor (Combès), it doesn't seem to have much to do with Manichean attacks on the OT,<sup>88</sup> and it verges on the laughable to say that it addressed a local problem 'because they lied a lot in Augustine's neck of the woods'.<sup>89</sup> There is no dedicatee, and no explanation of its genesis in the *Retractationes*. Just apologies: Augustine had intended to destroy it, but it didn't happen. It was *omnino molestus*. Many years later in 420 he let it live. The well-contextualized and targeted *Contra Mendacium* covered some, but not all of the same ground.

My favourite scholarly maxim is: 'Be confused when appropriate' or *Est quaedam etiam nesciendi ars atque scientia*. Let's be confused. Quite a few sections of the *De Mendacio* are not unlike the Pseudo-Quintilianic *Declamations* or Seneca's *Controversiae*. Weird situations are used as heuristic devices to pinpoint just what is wrong with lying. Not

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85 *Retractationes* 2.60 *Tunc et contra mendacium scripsi librum cujus operis ea causa exstitit, quod ad Priscillianistas haereticos vestigandos, qui haeresim suam non solum negando atque mentiando, verum etiam pejerando existimant occulendam, visum est quibusdam catholicis Priscillianistas se debere simulare, ut eorum latebras penetrarent. Quod ego fieri prohibens, hunc librum condidi. Hic liber sic incipit: Multa mihi legenda misisti.*

86 Paul J. Griffiths, *Lying: An Augustinian Theology of Duplicity* (Grand Rapids, Mich.: Brazos Press, 2004).

87 Augustine, *Epp.* 28, 40, 71, and 75 (from Jerome) and *Expositio epistolae ad Galatas*.

88 Gustave Combès, *Oeuvres de Saint Augustin. 2: 1. série, opuscules, Problèmes moraux, De bono conjugali, De conjugii adulterinis, De mendacio, Contra mendacium, De cura gerenda pro mortuis, De patientia, De utilitate jejunii / texte de l'édition bénédictine, traduction, introduction et notes de Gustave Combès* (Paris: Desclée, de Brouwer, 1948), p. 238. Even if the Manichees used the apparent lies in the OT to condemn the OT wholesale, why should this possibly encourage certain Christians to lie, using the OT as an authority for it?

89 Combès, *Oeuvres de Saint Augustin. 2: 1. série, opuscules*: 'd'abord, parce qu'on mentait beaucoup dans son coin de Numidie'.

pirates and kidnapping though, but (as one might expect with a Christian author) persecution. Here things became interesting. In extreme situations lies are sometimes considered defensible to save people from death or from 'fates worse than death'.

We all know the standard Christian virgin threatened with the *leno* by the Evil Persecutor ... but Augustine's scenarios are different and almost unparalleled.<sup>90</sup> His are Perils of Paul (not Pauline) and all involve the threat of *stuprum*. There can be no doubt that he intends homosexual rape. Indeed he initiates the whole sequence with a discussion of Lot's decision to offer the Sodomites his own daughters in *Genesis* 19.4-5. It was better, naturally, for women to suffer *stuprum* than men. He continues with the following scenario: that a Christian male is threatened with *stuprum* during a persecution, unless he sacrifices. Should he sacrifice or not? The opponents argue that 'consenting' to the rape is not a *passio*, but a deed (*factum*). Better to sacrifice!<sup>91</sup>

But there are objections: Can the sin of another, even though committed *against* you, be imputed to you, if you could have averted it with a lesser sin of your own? And are acts that defile your body exceptions?<sup>92</sup> For example, aggressive humiliations such as being smeared with excrement, made to swallow it, or made to undergo rape like a woman?<sup>93</sup> These latter, the 'fates worse than death', should indeed be avoided even at the cost of sins of our own, say Augustine's interlocutors. He (as we come to expect)<sup>94</sup> argues that there is no sin or defilement without consent from the victim, even in cases of male rape.

I draw attention to one particular and salient feature of Augustine's discussion: a lie used to deflect a homosexual suitor: e.g. someone is looking for a male partner in *stuprum*,

90 Except for in the Prol. to Jerome's *Vita Pauli*, where a martyr is tempted by a prostitute: *alium iuuenili aetate florentem, in amoenissimos hortulos praecepit abduci. ibi que inter lilia candentia et rubentes rosas, cum leni iuxta murmure aquarum serperet riuus, et molli sibilo arborum folia uentus praestringeret, super exstructum plumis lectum resupinari, et ne se inde posset excutere, blandis sertorum nexibus irretitum relinqui. quo cum, recedentibus cunctis, meretrix speciosa uenisset, coepit delicatis stringere colla complexibus: et, quod dictu quoque scelus est, manibus attricare uirilia: ut corpore in libidinem concitato, se uictrix impudica superiaceret. quid ageret miles christi, et quo se uerteret, nesciebat. quem tormenta non uicerant, superabat uoluptas. tandem coelitus inspiratus, praecisam mordicus linguam in osculantis se faciem exspuit; ac sic libidinis sensum succedens doloris magnitudo superauit.*

91 *De Mendacio* 9.12 *Unde si exstitit causa ut eligeret christianus thurificare idolis, ne consentiret stupro quod persecutor ei, nisi faceret, minabatur; recte videntur quaerere cur non etiam mentiretur, ut tantam illam turpitudinem devitaret. Ipsam enim consensionem, qua se stuprum pati mallet, quam thurificare idolis, non passionem dicunt esse, sed factum: quod ne faceret, elegit thurificare. Quanto igitur mendacium proclivius elegeret, si mendacio posset a sancto corpore tam immane flagitium remove?*

92 *De Mendacio* 9.15.

93 *At si fimo perfundatur, aut si tale aliquid ei per os infundatur vel inculcetur, patiaturve muliebria; omnium fere sensus abhorret, et conspurcatum atque immundum vocant.* (*De Mendacio* 9.15)

94 His deconstruction of the suicide of Lucretia in *CD* 1.16-20 is far better known.

and one passes him along to a chaste man saying, 'He'll get you exactly what you want: he knows and loves such fellows'.<sup>95</sup> An extraordinary ventriloquistic dialogue! Augustine is explicitly concerned with *fama* (reputation): and worried whether a third party's reputation should be destroyed to protect someone from lust.<sup>96</sup> And what if the third party is *willing* to have his reputation compromised?<sup>97</sup>

Could there be a connection between the two works of Augustine that discuss homosexual scenarios? Could we possibly be looking at an actual 'case study' buried in the *De Mendacio*? And might it have something to do with Boniface and Spes? After all, he discussed his own two mistresses *sine nomine* in the *De bono coniugali*.<sup>98</sup> Should we return to the 'He said-He said' putative scenario of *Ep.* 78 and wonder whether there couldn't have been a third or fourth party involved. Here's how I could tweak the scenario: *Suppose Spes made his advance to Boniface after having been misdirected to him as a likely candidate by some third party — perhaps even to protect a fourth party from Spes' attentions?* Could this scandal have started in Augustine's new monastery in 395 and festered till it was 'outed' and went completely viral outside the monastic community in Hippo-at-Large?

I cannot resist mentioning that this text has not been used to study the history of homosexuality. John Boswell did not discuss it — Augustine directly contradicts his interpretation of the sin of the Sodomites.<sup>99</sup> They wanted to have sex with, or rape, the male messengers. By the time the rape dilemma reaches the *City of God* it's all about Lucretia.<sup>100</sup> Perhaps Alaric's Goths only assaulted ladies? And by the time Augustine recast the material for Consentius in 420, all the allusions to homosexuality had been removed — except for the exegesis of *Gen.* 19.4-5.<sup>101</sup> We may have hit another one of Augustine's eloquent

95 *De Mendacio* 9.16.

96 9.16 *nescio utrum alterius fama mendacio violanda sit, ne alterius corpus aliena libidine violetur.*

97 *De Mendacio* 10.16 *Sed utrum etiam volentis fama falso stupri crimine laedenda sit, ut ab alterius corpore stuprum avertatur, magna quaestio est. Et nescio utrum facile reperitur quomodo justum sit volentis famam falso stupri crimine maculari, quam ipso stupro corpus inviti.*

98 See Danuta R. Shanzer, "Avulsa a latere meo": Augustine's Spare Rib — Augustine *Confessions* 6.15.25', *Journal of Roman Studies*, 92 (2002): 157-176 (pp. 162-64).

99 E.g. John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (Chicago: University of Chicago Press, 1980), p. 98.

100 CD 1.16-20.

101 *Contra Mendacium* 9.20-22 What Lot did was wrong, but aren't we so appalled by the men of Sodom that any means of warding off what they propose is justified? Lot must have been overcome with fear and terror. Just imagine his guests being subjected to *muliebria*! All other examples of *stuprum* involve men and women: *CMend.* 7.17 *Quid si enim ex numero Priscillianistarum impudicarum aliqua femina injiciat oculum in catholicum Joseph, eique promittat prodituram se latebras eorum si ab illo impetraverit stuprum, certumque sit eam, si ei consensum fuerit, quod pollicita est impleturam?*

silences. It is no coincidence that for him, in the end, silence was *not* tantamount to lying.<sup>102</sup>

*What happened?*

We all want to know what happened in the third act to Boniface and Spes at Nola. We never find out, and no one has cared or dared to ask. So I'll explore some rival answers and make a tentative suggestion by adducing some new texts:

*Evidence simply lost*

The end of the story may have vanished into one of the *lacunae* in Paulinus' and Augustine's correspondence.<sup>103</sup>

*They never went*

Or perhaps the two never actually set out. It's quite extraordinary — to send two men who hate one another and have engaged in mutual accusations of homosexual solicitation on a long sea-voyage together to get tested by a saint's relics — even if they agreed to the procedure in writing.<sup>104</sup> Even curiöser — Boniface agreed to forgo his letter of introduction (*litterae formatae*), so he couldn't be identified as a priest and give, or take, communion.<sup>105</sup> Augustine apparently didn't want to give such a letter to Spes. The playing field had to be even.

*Perhaps they went, but the miracle didn't work*

Plutarch's apologetic treatise, *On the delayed vengeance of the gods*, essentially admits how often oaths failed to generate tangible and timely results.<sup>106</sup> Perhaps that is why we hear nothing of Felix's verdict in Paulinus' later writings.<sup>107</sup> After all, there is a logical difficulty in understanding how a bi-lateral oath *could* have worked.<sup>108</sup> In the case of unilateral ordeal-by-oath no response spells vindication.<sup>109</sup> This purgation was a 'soft option'. But what happened when opposing parties swore? This would have required a

102 Griffiths, *Lying*, p. 33. Also *CMend.* 23.

103 Courcelle, 'Les lacunes de la correspondance'.

104 *Ep.* 77 *secundum placitum eorum, quod vobis si volueritis poterit recitari*.

105 *Ep.* 78.4.

106 See, for example, Plutarch, *De sera* 549a for Lyciscus' false oath and its delayed punishment.

107 Lehmann, 'Eine spätantike Inschriftensammlung', p. 268, n. 106, seems to be dismissing the argument *ex silentio* a bit too readily.

108 The point is made in a different context by Jean-Philippe Lévy, 'Le problème des ordalies en droit romain', in Lévy, *Autour de la preuve dans les droits de l'antiquité* (Napoli: Jovene, 1992), pp. 407-434 (p. 431).

109 The ordeal-by-oath is weighted in favour of the proband.

positive answer or even a miracle, putting this practice firmly in the category of 'ordeal-like oath' — hence a higher threshold.

*Perhaps something even worse happened*

I lean towards the latter answer because the episode at Nola can be linked to yet another important topic: Augustine's theology of the oath.<sup>110</sup> In the early 400s he was quite willing to send the two suspects off to be tested by a process that involved either parallel or sequential oaths.<sup>111</sup> Yet in *Sermons* 180 and 307-308 (dated to 414/15), his most detailed treatments of the problem of swearing, he firmly states that to require an oath of someone *whom one knows to be lying* is to commit murder,<sup>112</sup> the reason being Wisdom 1.11, that 'he who tells a lie kills his own soul'.<sup>113</sup> This invisible death was much worse than what his congregation seemed to expect: a god who as present avenger (*praesens ultor*) would somehow strike perjurers down immediately.<sup>114</sup> Now one or the other<sup>115</sup> (or both) of these men had been lying. Did Augustine come to realize that he had 'murdered' one or both? The author of *Sermon* 180 would never have sanctioned the parallel oath process prescribed in *Ep.* 78. Did Augustine come to learn better? And how? It has been suggested that it was Pinianus' unwise oath of 410/11 that may have triggered the turnaround in Augustine's thinking, but that was a promissory oath, not one of the type under consideration here.<sup>116</sup>

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110 He discusses oaths at some length in his treatises on lying: *De Mendacio* (c. 420) and *CMend.* and in *Sermones* 180, 307, and 308. There is a chapter-length treatment of the problem in Uhalde, *Expectations of Justice*, pp. 77-104.

111 At *Ep.* 78. 3 *Nam et nos novimus Mediolani apud memoriam sanctorum, ubi mirabiliter et terribiliter daemones confitentur, furem quemdam, qui ad eum locum venerat ut falsum jurando deciperet, compulsus fuisse confiteri furtum, et quod abstulerat reddere* suggests that the thief was compelled to swear.

112 *Sermo* 180.10.11 *Si autem scit eum fecisse, novit fecisse, vidit fecisse, et cogit iurare homicida est.* Also *Serm.* 308.4.

113 The proof text is Sap.1.11 *Os quod mentitur occidit animam.*

114 *Sermo* 180.8 *Sed tu praesentem Deum ultorem putas, si ille qui te iuratione falsa deceperit, continuo expiraret.*

115 See *Ep.* 78.2 *de quolibet eorum divino iudicio propaetur.* Augustine knew that one or the other must be lying, but did not mention the possibility that both might be.

116 Uhalde, *Expectations of Justice*, pp. 97-101, discusses the débacle of Pinianus' oath at Hippo. The dossier consists of *Epp.* 124, 125, and 126, dated by Johannes Divjak, 'Epistulae', in *Augustinus-Lexikon.* / Vol. 2 Fasc. 5/6, *Donatistas (Contra-) -Epistulae*, ed. by Conrad Meyer et al. (Basel: Schwabe, 2001), pp. 893-1057 (p. 1032) to 410 (*Ep.* 124) and 410/11 (*Epp.* 125-26). It was indeed, it would appear, a milestone in Augustine's views about oaths, but it cannot be what changed his mind about the requiring of an oath of someone who one knew was lying, for Pinianus' oath was a strictly promissory one.

*Another indicator pointing to the seriousness of making someone kill his soul*

There are many lacunae and loose ends in Augustine's biography. And here I am hazarding a guess. It may be no coincidence that *Ep.* 80 to Paulinus, falling directly after the Spes-Boniface affair, asks how we are to know God's will without heavenly voices, prophets, visions, dreams, or ecstasy. Augustine intimates that 'when things happen and are conducive to something other than what we had established, we are compelled to recognize that the will of god was different from ours'.<sup>117</sup> Was he thinking of the recent debacle? Something put him seriously off the idea of requiring oaths of others who one suspected, or knew, were guilty. His *Sermon* 308 against swearing oaths focused on Herod's unwise oath: to give Salome whatever she desired.<sup>118</sup> Its festal day, the Beheading of John the Baptist, demanded that topic. But that was a *promissory* oath, quite a different beast. The coda of that sermon, however, told of a parishioner of his with the wonderful name Tutulismeni.<sup>119</sup> Someone had sought to cheat him by refusing to return a deposit or to pay up. Tutulismeni required an oath of the malefactor who lost (*perdit*). That night he was haled in a dream before the heavenly court and told never to require an oath again. He was beaten and awoke to find the marks on his body.<sup>120</sup> Obviously, by this time, the wickedness of demanding an oath of a perjurer, something that would be wrong *only to a Christian*, mattered to Augustine immensely.<sup>121</sup> He cited the supernatural *exemplum* of Tutulismeni, but might have had fallout from the Spes-

117 *Ep.* 80.3 *sed plerumque non uoce de caelo, non per prophetam, non per reuelationem uel somnii uel excessus mentis, quae dicitur extasis, sed rebus ipsis accidentibus et ad aliud, quam statueramus, uocantibus cogimur agnoscere dei uoluntatem aliam, quam erat nostra, tamquam si proficisci statueremus et aliquid oreretur, quod consulta de officio nostro ueritas uetaret deserere, aut decernentibus inmanere nuntiaretur aliquid, quod eadem ueritate consulta nos compelleret proficisci... delicta quis intellegat?*

118 The case had already been discussed by Ambrose in *De Officiis* 3.12.76-77: *Quanto tolerabilius tali fuisset periurium sacramento! Si tamen periurium posset dici, quod ebrius inter uina iurauerat, quod euiratus inter saltantium choros prompserat.*

119 *Sermo* 308.5 *Ab illo audiui quod dico. Nescio quis negavit ei, vel quod commendauerat, vel quod ei debebatur; et hominis fidei se commisit. Commotus provocavit eum ad iusjurandum. Iuravit ille, iste perdidit: sed isto perdente, ille penitus periit. Dicebat ergo iste Tutulismeni homo gravis et fidelis, ipsa nocte exhibitum se fuisse ad iudicem, et cum magno impetu atque terrore se pervenisse ad praesidentem excelsum quemdam et admirabilem virum, cui parebat officium similiter excelsorum, iussum fuisse perturbatum retro revocari, et interrogatum fuisse his verbis: Quare provocasti hominem ad iurationem, quem sciebas falsum esse juraturum? Respondit ille: Negavit mihi rem meam. Responsum est illi: Et nonne melius erat, ut rem tuam quam exigebas perderes, quam animam hominis istius falsa iuratione perimeres? Prostratus iussus est caedi. Caesus est tam graviter, ut in dorso evigilantis vestigia plagarum apparerent.*

120 For the dream *qua* dream, see Martine Dulaey, *Le rêve dans la vie et la pensée de saint Augustin* (Paris: Études augustiniennes, 1973), pp. 170-75

121 Also to be noted is the fact that such an oath could be required (presumably without relics). By the time of the *CMend.* 21.64, Augustine tells of men who force their wives to swear oaths when they suspect them of adultery. They thought them adulteresses, but incapable of perjury.

Boniface affair in mind — and his own role in the matter.<sup>122</sup> His biographer Possidius even singled out his strictures against oaths in his *VAugustini*.<sup>123</sup>

### Conclusions

The purgative oath on relics is first glimpsed in the 380s/400 under shadowy, but intriguing circumstances, in a local triangle between Hippo, Milan, and Nola. Its genesis can be analyzed much as I have that of two other major types of ordeal that, I argue, go back to the trauma of persecution. They involve 'hi-jacking' what had been instruments of torture or martyrdom and embracing their pain as a vehicle not of judicial confession ('I'm guilty'), but of Christian confession ('I'm a Christian'). Torture survived looks much like an imposed unilateral ordeal,<sup>124</sup> and the possibilities may have occurred to what were technically called 'confessors'.<sup>125</sup> Augustine told a success story about Firmus of Thagaste in the *De Mendacio*.<sup>126</sup> Hot ordeals involve similar apparatus (cauldrons, plates, fire) used by the proband as a method of proof. And the first examples of such hot ordeals come in theological contexts, where there is sectarian rivalry. In the case of the tasting ordeals, pagan sacrificial meats and wine had been used to test and detect Christians. Christians would come to use foodstuffs and also the Eucharist to detect sinners. And with relics, *res sacrae*, despised body parts, that pagans had sought to destroy during the persecutions, survived the testing of their identity and emerged with the power to detect perjury. I had mentioned a characteristically Christian maneuver involved in all these cases, and by this I mean the re-valorization and re-deployment of something bad as something good, useful, and sublime. For eloquent parallels one has only to compare a great poet like Venantius

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122 Augustine discusses his own sins explicitly in some cases, but covertly in others. For more on the matter in relation to his own sexual sins, see Shanzer, "Avulsa a latere meo", pp. 157-76.

123 Possidius *Vita Augustini* 25.1-2 *Et ne quisquam facili iuratione etiam ad periurium decidisset, et in ecclesia populo praedicabat, et suis instituerat, ne quis iuraret, ne ad mensam quidem. Quod si prolapsus fecisset, unam de statutis perdebat potionem; numerus enim erat suis se cum commorantibus et convivantibus poculorum praefixus.*

124 Execution survived, depending on the method used, could also approach the imposed unilateral ordeal. One can see this clearly in the stories on the quasi-martyrs in Greg. Tur. *GM* 68 and 69, both women accused of adultery who fail to drown and are vindicated. These can easily be seen as prototypes of ordeal by cold water. So too Barthélemy, "Diversité des ordalies médiévales", p. 6.

125 One might consider texts such as Prudentius *Peristephanon* 10.481 ff. where an extended comparison is drawn in bravado between the ravages of torture and those of disease.

126 *De Mendacio* 13.23 *Fecit hoc episcopus quondam Thagastensis Ecclesiae, Firmus nomine, firmior voluntate. Nam cum ab eo quaereretur homo iussu Imperatoris per apparitores ab eo missos, quem ad se confugientem diligentia quanta poterat occultabat; respondit quaerentibus nec mentiri se posse, nec hominem prodere, passusque tam multa tormenta corporis (nondum enim erant imperatores christiani), permansit in sententia. Deinde ad imperatorem ductus, usque adeo mirabilis apparuit, ut ipse homini quem servabat, indulgentiam sine ulla difficultate impetraret. Quid hoc fieri potest fortius atque constantius?*



Fortunatus meditating in paradoxes on the Cross itself: murderous gibbet, mast of the ship of salvation, and living tree fertile with strange fruit.<sup>127</sup>

There is more to be done to tie together the many threads of this complicated story that underpins an important medieval institution — and many ‘action items’. Herewith some general speculation:

1. Augustine's non-*retractatio* may have enabled the practice to develop. Fortunately for Christian ordeal-by-oath, its first attestation was (problematically) bi-lateral, thereby setting the bar too high. Many historically attested oath-ordeals were unilateral — and therefore usually successful. This was the easy way out. To hagiography belong sinister accounts of ordeals-by-oath when sinners were zapped.<sup>128</sup>
2. There is a dynamic relationship between oaths and ordeals, and in some circumstances the latter might be preferable. e.g. since the ordeal was performed with the body, and not with the tongue, it might not have ‘counted’ as swearing, i.e. taking the name of the Lord in vain or killing one's spirit with a lie.<sup>129</sup> A bilateral ordeal could work as competitive thaumaturgy in cases where the parties were of different religions or confessions, so each could regard it as a challenge to *his* God. There were biblical precedents.
3. Ordeal by oath piggybacked on relics and the development of their cult. However locally relics begin, their use as *res sacrae* and ordeals for proof eventually translated into complete portability and universality. A tipping point was reached.<sup>130</sup> We can see the very local and human way in which, through intellectual communication across the Mediterranean, diverse local events turned into ‘things done’. ‘What was done’ in Late Antiquity coalesced under Christian influence into something that eventually would be universally accepted as a script for certain unpleasant situations.

In this case history we can use Augustine's two letters in many different ways. Though largely ignored or cursorily footnoted, they make a good show, if one makes them sing for their supper. Whether there would eventually be strong early medieval localisms needs to be investigated.<sup>131</sup> But that is for another venue.

127 Fortunatus, *Carm.* 2.1 and 2.2.

128 For many examples see Greg. Tur. not just the *Miracula*, but the *DLH*. Also above n. 69.

129 This would go a step beyond debate about whether an oath if written as opposed to spoken. For which see Uhalde, *Expectations of Justice*, p. 91.

130 This could have happened either by word of mouth, or more probably, as Augustine might have said (*CD* 8.22) *ista nec similiter innotescunt, neque, ut non excidant animo, quasi glareae memoriae, crebra lectione tunduntur*, they, like the gravel of memory, may have been ground down through frequent repetition in *lectiones*.

131 E.g. is the proliferation of purgations by oath in Gregory of Tours a Frankish phenomenon?