Glenn Mills

CHRISTIANITY'S JUDICIAL VOICE: ELEMENTS OF ROMAN PRIVATE LAW IN LATIN CHRISTIAN SOURCES (2ND – 5TH CENTURY CE)

MA Thesis in Comparative History, with a specialization
in Late Antique, Medieval, and Renaissance Studies.

Central European University

Vienna

May 2021

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(United Kingdom)

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Accepted in conformance with the standards of the CEU.

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Chair, Examination Committee

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External Reader

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External Supervisor

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I, the undersigned, **Glenn Mills**, candidate for the MA degree in Comparative History, with a specialization in Late Antique, Medieval, and Renaissance Studies declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 25th May 2021

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Glenn Mills

Abstract

This thesis explores the rhetorical use of the terminology and concepts of Roman private law by the early Church Fathers and Patristic authors during the period spanning the late second to the early fifth century CE. Other scholars have studied the intersectionality of Christianity and Roman law but have tended to focus on the ways in which Christians contributed to the development of Roman law and, later, Canon Law. Less attention has been paid to the use of Roman law in a purely metaphorical, analogous or explicatory capacity as it appears in certain theological sources. This thesis looks at three areas of private law (contract law, property law and family law) in relation to three Christian case studies (Tertullian, Augustine and Lactantius). In each case, it is argued that these authors invoked Roman private law as a tool for explaining the relationship and obligations between man and God. It is argued that Roman law constituted a readily available hegemonic apparatus, the use of which could consolidate Christian arguments during a period in which the prosperity of the faith was far from certain.

Acknowledgements

This thesis was written during unusual global circumstances which have transformed the way all of us work, research and collaborate. The support and empathy of friends, colleagues and family has proven more important than ever and I would like to dedicate some space to those who have directly or indirectly contributed to the realization of this thesis.

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Introduction

Background

Recent decades have witnessed a burgeoning corpus of scholarship on the relationship between early Christian writing and Roman law between the second and fifth century CE. The profuse presence of legalistic topoi, metaphors and concepts in the theological writing of the early Church fathers suggests that theologians identified something of rhetorical merit in Roman legal writings. At the same time, this had to be reconciled with the fact that Roman law did not always align with the *Lex Dei* (God's Law), even following the Empire's embracement of Christianity. The dilemma is aptly encapsulated in Jerome's remark: "The laws of the Caesars are one thing, the laws of Christ are another; Papinian taught one thing, our Paul taught another."[1]

What is observed throughout this period is a gradual process of assimilation whereby Christians increasingly warmed to notion that biblical and Roman law were in harmony, and that the latter is merely an imperfect reflection of the former. With the Christianisation of the Roman Empire, the implementation of Roman legal doctrine in Christian sources became more common and less problematic. This paradigm of 'borrowing' from legal texts was not only observed in the esoteric writings of the Church Fathers, but was even present 'on the ground,' with common Christian rituals such as the baptismal rite being inspired and shaped the language of Roman contract law. By the fourth century, this assimilation reached something of a watershed with the emergence of comparative law as a genre of Christian writing. Such texts place biblical and Roman law side by side, showing how the latter is in harmony with and even inspired by the former.

[1] "Aliae sunt leges Caesarum, aliae Christi; aliud Papinianus, aliud Paulus noster praecipit." Jerome, *Epistle 77*, *Corpus Scriptorum Ecclesiasticorum Latinorum Vol.* 55 (Vienna: Leipzig, 1912), 39.

Existing Research and Thesis Objectives

Existing research on Christian engagement with Roman law during the second the fifth century CE has been extensive but tends to focus on Christians *as* jurists, either by looking at the way in which they contributed to the development of laws, monastic rules and canons (Reynolds et al. 2019) or by looking at the way in which they developed their own legal and forensic practices in the early Church Councils (Humfress 2007). Others have looked at the presence of legal concepts in Christian sources as evidence for understanding the biographical context of the author and a means for establishing his level of legal learnedness or lack thereof (on Tertullian, Rankin 1997; on Cyprian, Clarke 1965). What has attracted less attention is the way in which Christian authors used the law in a more supplementary way: as a rhetorical device, as an analogy or metaphor for expounding complex doctrine or as a system for logical argumentation which could be extrapolated and reapplied in a Christian context. Some survey studies have been conducted in this area, however, their depth is inevitably limited. Francesco Lardone (1933) produced one such survey on Augustine by searching the writer's voluminous oeuvre for whatever references to Roman law he could find. Such studies have proven to be an invaluable starting point for research in this area and have helped narrow down the source pool, however, more rigorous analysis is needed if we are to fully apprehend the purpose, effect and implications of these legal references.

This thesis proposes to examine the way in which early Christian authors in the Latin West appropriated the language of the law for rhetorical purposes. Rather than focusing on the way in which they shaped Roman law or developed their own legal traditions, it simply considers the way in which they capitalised upon Roman law as a ready-made hegemonic apparatus which held sway across a vast and ethnically diverse empire. For parts of the period under discussion (2^{nd} – 5^{th} century CE), Christianity occupied a marginal position in the Empire; the law was quite often the instrument of its oppression, particularly during the

Diocletian persecutions of the early fourth century. It is striking, then, to find Christians effectively speaking 'the language of the enemy.' At the same time, it makes perfect sense that they would use the language of the main power player, discreetly showcasing the consonance between the values of their faith and those of the state law. Further, when it came to proselytising and persuading a non-Christian audience, the language of the law was a convenient common turf on which to play. It was exoteric, pervasive and familiar to and comprehensible by Christians and non-Christians alike, all while carrying a status as something unassailable and indisputable.

In the interest of lending the thesis a more concentrated focus, I have confined myself to a select few branches of private law. The ambit of private law in the Roman Empire was similar to what it is in most modern legal systems: namely, "the body of rules and principles relating to individuals in Roman society and regulating their personal and proprietary relationships."[2] The final word 'relationships' is, in many ways, the crux of private law, and will be a leitmotif throughout this thesis. Christianity is, after all, a religion built on relationships. Firstly, there is the broken relationship between man and God after the Fall. Later, there is the relationship between Christ and God, defined by Christ's willing obedience to the Father in sacrificing himself for the sake of man. Finally, there is the renewed relationship between man and God, made possible by and mediated through Christ. The thesis will look in turn at three distinct areas of private law: contract law, property law and family law. In all such cases, it will be observed that Christian authors used the concepts in these legal categories as a means of orienting man's position in relation to God, as well as understanding man's obligations to God, the privileges God has bestowed on man (including the limits of these privileges), and the role of Christ as an extension of God.

[2] George Mousourakis, *Fundamentals of Roman Private Law* (Berlin and Heidelberg: Springer, 2012), viii.

Sources

The primary sources used throughout this study fall into two broad categories. Firstly, there are the legal texts which broadly consist of the institutions written by prominent jurists, and subsequently promulgated and endorsed by the emperors in codices. Among those cited are the "great five" jurists whom Theodosius II nominated in his *Law of Citations* (426 CE) as the authorities on which judgements should be made: Papinian, Paul, Ulpian, Modestinus and Gaius.[3] This first category serve as the primary lens through which I will reconstruct and expound the complex legal practices that must be understood on their own terms before turning to the religious sources.

In most cases, I have quoted the writings of these jurists as they appear in the *Digest* or *Pandects* of the Emperor Justinian (completed by 534 CE). In 528, Justinian delivered an imperial address to the senate of Constantinople in which he announced his ambitious project of synthesising the diffuse mass of Roman legal writings into a single compendium.[4] The fruit of this labour was the *Corpus iuris civilis* ("Body of Civil Law"), a collection of the relevant jurisprudential writings made up of three parts: the *Codex*, the *Institutiones* and the *Digesta*. The first of these, the *Codex*, was a collection of imperial constitutions which would supplant earlier collections, including the *Codex Theodosianus* produced a century earlier.[5] The aim was to reduce, through a painstaking process of selection and deselection, the number of imperial constitutions which had snowballed over the centuries as each emperor promulgated his own laws on top of or in replacement of the laws of his predecessors.[6] The *Institutiones* is a shorter

[3] For a brief summary of the *Law of Citations* and the importance of these jurists, see Caroline Humfress' discussion on A. H. M. Jones' *The Late Roman Empire* (1964). Caroline Humfress, "Law and Justice in *The Later Roman Empire*," in *A. H. M. Jones and the Later Roman Empire*, ed. D. M. Gwynn (Leiden and Boston: Brill, 2007), 131-132.
[4] Caroline Humfress, "Law and Legal Practice in the Age of Justinian," in *The Cambridge Companion to the Age of Justinian*, ed. Michael Mass (Cambridge: Cambridge University Press, 2005), 162.
[5] Ibid., 161.
[6] Wolfgang Kaiser, "Justinian and the *Corpus Iuris Civilis*," in *The Cambridge Companion to Roman Law*, ed. David Johnson (Cambridge: Cambridge University Press, 2015), 123.

work, comprised of four books, and was intended to be used as an introductory textbook for the curriculum at the law schools in Berytus, Constantinople and Rome.[7] Lastly, the *Digest* was intended to harmonize the often dissonant and contradictory mass of jurisprudential writings into a single collection.[8] As noted by Caroline Humfress, the *Digest* was intended to serve a particularly practical purpose and advocates were expected to demonstrate their knowledge of its contents in the courts.[9] More importantly, it addressed the issues that came with invoking the potentially obsolete opinions of the ancient jurists as a precedent for modern judgements.[10] In sum, if something was not in the *Digest* the it was an inadmissible argument in the sixth-century courts. To this end, the *Digest* was a quality control device, and the presence of the "Great Five" jurists within its pages is a testament to their enduring influence and currency throughout the period under discussion.

Also included in this category are the extra-legal sources. Such sources are not expressly concerned with legal matters, but often include incidental remarks or subtext which provide invaluable insight into legal practice 'on the ground.' These sources include various correspondences, essays and treatises by such figures as Pliny the Younger, Seneca, Cicero and Vegetius. Their role in the thesis is relatively marginal compared to the juristic writings, but they nevertheless serve to supplement and corroborate the practices set out in the law codes.

The second category are the religious sources, and these texts form the main focus of the thesis' argument. The texts are primarily theological, exegetical and apologetic treatises produced by the Latin early Church Fathers and Patristic writers. The figures under discussion include Tertullian (c. 155 – c. 220 CE), Lactantius (c. 250 – c. 325 CE) and Augustine (354 – 430 CE), each of whom evince a level of legal learnedness which far surpasses that of most non-professionals. All of these figures received training in rhetoric, a discipline which – with

[7] Ibid., 126.
[8] Humfress, "Law and Legal Practice in the Age of Justinian," 166.
[9] Ibid., 166.
[10] Ibid., 166.

its focus on argumentation and persuasion - was an essential foundation for theologians and legal professionals alike. Some of the figures may have received a formal education in law or found themselves in positions intimately connected to the legal sphere. Tertullian certainly practiced law as an advocate and there is some debate over whether or not he is the same person as the jurist Tertullianus who is quoted in the *Digest*.[11] Augustine, in his role as Bishop of Hippo, was responsible for holding the *audientia episcopalis* ("audience of the bishop"), a procedure which involved arbitrating in disputes among his Christian flock, and thus, a duty which straddled the boundary between judicial and religious leadership. Regardless of the extent of their legal training or their involvement in the profession, these writers share a common appreciation for the law as a rhetorical repository. Their writings are suffused with the terminology of the law and instances of implicit or explicit comparisons with legal customs. Such parallels reveal a particular idiosyncratic style of Christian legal discourse during a period in which Christianity's relationship with the Roman state – and, thus, the law – was in constant flux.

Structure

The thesis is divided into three chapters, each of which will expound a different Christian writer in relation to a particular area of Roman private law. In the first chapter, I will focus on the more practical application of Roman law in Christian ritual, using the case study of contract law and the baptismal rite. It is argued that the formula of the *stipulatio* – the most widespread type of contract in the Late Roman Empire – was a source of inspiration for the baptismal oath which duplicates the same language style and grammatical structure. Tertullian recognised the debt the baptismal rite appeared to owe to the Roman *stipulatio* and invokes the

[11] On Tertullian as a jurist, see Timothy Barnes, *Tertullian: A Historical and Literary Study*, 2nd edn. (Oxford. Oxford University Press, 1985), 22-29 and David I. Rankin, "Was Tertullian a Jurist?" *Studia Patristica* 31 (1997): 335-342.

parallels at numerous points in his own writing. In his treatise *De Resurrectione Carnis* ("On the Resurrection of the Flesh"), he argues that the *words* of the baptismal oath constitute the essence of the ritual and not the submersion in water. In doing so, he is extending the same logic of the *stipulatio* in which the spoken affirmation also marked the point at which the contract was made, even before any goods had changed hands. In another treatise *De Baptismo* ("On Baptism"), he uses the notion of legal agency in Roman contract law to argue against the practice of infant baptism, reasoning that a child below the age of reason should not be able to make a contract with God anymore than they can make a secular contract.

The second chapter turns to the area of property law and examines the way in which Roman conceptions of ownership are reflected in Christian writings on the righteous use of possessions. The chapter hinges on the distinction in Roman law between two different types of ownership, *domium* and *possessio*. While the former denotes absolute ownership and the right to sell and redistribute the property, the latter describes a provisional ownership whereby the possessor is merely temporarily holding the property which ultimately belongs to a separate party (the one who holds *dominium* over the property). In late Roman society *dominium* was a prerogative of freemen, while slaves were restricted to *possessio* since anything they held was ultimately the property of their master. Augustine used this same distinction to support his argument regarding the status of material goods according to Christian doctrine. In his *Tractatus in Iohannis Evangelium* ("Tractates on the Gospel of John"), he addresses the complaints of the Donatists, whose property had been confiscated as a punitive response to their heresy, by using the distinction between *possessio* and *dominium* to argue that no man has any real claim to his possessions since all things belong to God. As in the master-slave relationship, man is only permitted to hold property by virtue of the grace of God, who ultimately holds *dominium* over the earth and all things therein. By the same token, man is expected to follow God's mandate on the use of his possessions. Hence, in a number of his

Epistles, he revisits the notion of *dominium* and *possessio* to emphasise the Christian obligation of charity. By arguing through the terminology of Roman law, Augustine frames the biblical injunction to give onto the poor (something rather at odds with the Roman priority of amassing wealth) as a simple redistribution of resources ultimately owned and controlled by God.

In the final chapter, I will look at Roman family law with a specific focus on the position and prerogatives of the *paterfamilias* ("Father of the Family") and how this concept was used as an analogy for explaining the relationship and hierarchy between God, Christ and man. The *paterfamilias* was the supreme head of the Roman household, exercising total authority over his children, holding *dominium* over their possessions, reserving the right to arrange and refuse betrothals and, in theory at least, having the right of life and death over a child. Further, a *paterfamilias* could act *through* his children by conferring his authority onto a nominated child who could then conduct business and exercise authority in their father's name. The case study for this chapter is Lactantius' *Divinae Institutiones*, an apologetic text which explores, among other things, the issues of polytheism (the worshipping of many gods over the one true God) and the divine nature of Christ. Using the *paterfamilias* as a point of reference, he argues that a man cannot have two fathers and cannot serve two masters. God, like the *paterfamilias*, is singular by definition and, thus, should be served and worshipped exclusively. In his exposition on the nature of Christ, Lactantius invokes the *paterfamilias*' prerogative to act vicariously through the actions of his children as a way of explaining Christ's mission on earth and his divine nature. Like the *paterfamilias*, God can impart his authority onto his son who, in a sense, becomes conflated with his Father's identity, sharing his divine essence without ever threatening the singularity of God.

Methodology

Each chapter adheres to a similar two-part structure, addressing in turn the legal and religious scene. The first section of a chapter will focus exclusively on the law itself, setting out and unpacking the relevant legal concepts and established practices with the aid of the jurisprudential sources and relevant secondary literature. Explaining these concepts takes time, however, I deem it essential to fully appreciating their relevance to the Christian sources in which they appear. Quite often, the Christian texts will only implicitly invoke legal comparisons or will simply use a few specialised legal terms, relying on the audience's knowledge of the law to make the connection and extrapolate the implications for themselves. Hence, the present audience must be armed with that very same knowledge.

After discussing the law, I will include a brief bridging section in which I will discuss, in very general terms, the common denominators between that specific area of private law and Christian doctrine, in a sense anticipating some of the comparisons the Christian writers will make. The second section will then focus on the Christian sources, beginning with a general introduction to the writer in question, before delving into an analysis of his texts. During the analysis, I will draw attention to pertinent instances in which legal language or comparisons are deployed, before considering the deeper implications such rhetoric carries and what it reveals about the author's own views on the law and Christianity alike.

In addition to source analysis, the thesis will incorporate some modern works and theories from the fields of linguistics, the philosophy of language, anthropology and legal science. J. L. Austin's theory of 'speech acts' will be used throughout the discussion on contract law and baptism to help understand the role of the spoken word in such pledges. The works of the anthropologists Richard Schechner and Katherine Hoffman are discussed in relation to the transmission of ritual from one sphere (the law) to another (religion). More generally, the theory of intertextuality will be used to understand the way in which one text may silently

invoke the themes, ideas and associations of another text, and how that can transform the text's meaning and interpretation by the audience.

A Note on Translations

In most cases, I have cited the English translation in the body of the text with the Latin text in the footnote. Occasionally I will draw attention to the corresponding Latin term in the English text through means of square brackets. In rare cases, I may only cite the English translation. However, I have endeavoured to only do this when the source is not part of the core analysis, when philological nuance is less important or when the source is only being cited for contextual information. I have indicated where I have translated the source myself or when I have introduced minor corrections or clarifications to an existing translation. Again, modifications will be signalled with square brackets.

Chapter 1: Contract Law and Christian Ritual

This chapter examines the way in which Roman contract law shaped and influenced early Christian rituals and, specifically, the rite of baptism. It is argued that the formula used within Roman contract law constituted a convenient ready-made apparatus which could be appropriated and extrapolated by those wishing to capitalize upon its hegemonic status. The rite of baptism represents the most salient example of this phenomenon, for it was essentially a contract between the catechumen and God.

The chapter begins with a comprehensive overview of the main contractual forms found in Roman law, with a specific focus on the most common type of contract, the *stipulatio*. This will establish the degree to which this formula was woven into the fabric of Roman society and how familiar its grammatical structure would have sounded to Roman ears. I will then expound the importance of orality to the *stipulatio* by arguing that it was the audible, verbal affirmation which constituted the binding agreement. The second half of the chapter will turn to Christianity, first by demonstrating that Christianity is a "contractual faith," anchored in bilateral agreements, covenants and an ultimatum. Lastly, I will bring these discussion threads together by examining the rite of baptism, the significance of the spoken affirmation and the corresponding logic between the baptismal formula and the *stipulatio*.

1.1 Contractual Forms: An Overview

In the Late Roman West, binding agreements could be brokered through three main types of contract, each of which was suited to one or more particular contexts. In the case of marriages, the *Dotis dictio* (statement of dowry) was the common method of pledging the payment of a dowry, by having the wife or her *paterfamilias* verbally pledge to pay a certain

sum as dowry which the husband then accepts.[12] A second form, of which relatively little is known, was the *Promissio operarum a liberto*, which was a pledge made by a slave to their master to render certain services after (or possibly in exchange for) their emancipation.[13] The third and by far the most preponderant contractual form was the *stipulatio*. This followed a question-and-answer format in which the prospective creditor would ask the prospective debtor a close-ended question (e.g., 'Do you promise to…?) to which the debtor gives an affirmative answer to seal the agreement. The contract, then, was comprised of two essential components, the question (*interrogatio*) and answer (*responsio*), both of which needed to be articulated verbally for the contract to be legitimate.[14] The second-century jurist Gaius elucidates this formula in the following way:

> An obligation is made verbally by question and answer, in this manner: "Do you agree to convey? "I agree to convey," "Will you convey?" "I will convey," "Do you promise?" "I promise," "Do you promise on good faith?" "I promise on good faith," "Do you guarantee?" "I guarantee," "Will you do?" "I will do."[15]

Latin, at least in the Late Antique period, lacked a verbal word for "yes." Instead, the affirmative response is conveyed by repeating the verb of the question in the first-person conjugation (*spondes* > *spondeo*, *promittis* > *promitto*).

Henry S. Maine, in his timeless work on *Ancient Law*, stresses the importance of the *stipulatio's* dialogical aspect. A simple promise made by the promisor was not in itself enough; rather, it had to fit into a prescribed interrogative formula if it is to have any legally meaningful effect:

> Now, if we reflect for a moment, we shall see that this obligation to put the promise interrogatively inverts the natural position of the parties, and, by effectually breaking the tenor of conversation, prevents the attention from gliding over a dangerous pledge. With us, a verbal promise is, generally

[12] Alan Watson, *Roman Law and Comparative Law* (Athens, GA: University of Georgia Press, 1991), 32.
[13] Kathrin Stocker, *Die Verbalverträge des römischen Rechts* [The Verbal Contracts of Roman Law] (PhD thesis, University of Graz, 2015).
[14] For a further discussion of the *Stipulatio*, see Barry Nicholas, "The Form of the Stipulation in Roman Law," *Law Quarterly Review* 69 (1953): 63-79.
[15] *Verbis obligatio fit ex interrogation et responsione, velut: 'Dari spondes?' 'Spondeo,' 'Dabis?' 'Dabo,' 'Promittis?' 'Promitto,' 'Fidepromittis? 'fidepromitto,' 'Fideiubes?' 'Fideiubeo,' 'Facies?,' 'Faciam.*' Gaius *Institutiones*, ed. Edward Poste (Oxford: Oxford University Press, 1904), 3.92. My translation.

> speaking, to be gathered exclusively from the words of the promisor. In old Roman law, another step was absolutely required; it was necessary for the promisee, after the agreement had been made, to sum up all its terms in a solemn interrogation; and it was of this interrogation, of course, and of assent to it, that proof had to be given at trial – not of the promise, which was not in itself binding.[16]

The practical merit of this method lies in its conciseness and precision. The sequential series of questions linked with grammatically congruent answers lends itself easily to longer and more complex agreements with multiple clauses. The unambiguous quality of the *stipulatio* adhered to the emphasis on brevity and transparency in Roman law and educated discourse more generally. The second-century grammarian Aulus Gellius set out the importance of this Boolean (true/false) formula for avoiding uncertainty and preventing disputes:

> They say that it is a rule of the dialectic art, that if there is inquiry and discussion of any subject, and you are called upon to answer a question which is asked, you should answer the question by a simple [affirmation or denial]. And those who do not observe that rule, but answer more than they were asked, or different, are thought to be both uneducated and unobservant of the customs and laws of debate.[17]

The *stipulatio* ensured that contract law reaped the benefits of this idyllic form of discourse. Combined with its versatility which made it easy to adapt to any scenario, it is unsurprising that the *stipulatio* continued to endure while the circumstance-specific *Dotis dictio* and *Promissio operarum* receded into obscurity.[18] So widespread was its usage, in fact, that Seneca viewed it as a dispiriting symptom of the moral state of mankind:

> If creditors could only be persuaded to accept payment solely from those who are willing to pay. If only there were no strict formal contract binding purchaser to vendor. If only our agreements and compacts could be guarded without the

[16] Henry S. Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas, 16th edition* (London: Murray, 1897), 193.

[17] "Legem esse aiunt disciplinae dialecticae, si de quapiam re quaeratur disputeturque atque ibi quid rogere, ut respondeas, tum ne amplius quid dicas, quam id solum, quod es rogatus, aut aias aut neges; eamque legem qui non servent et aut plus aut aliter, quam sunt rogati respondeant, existumantur indoctique esse disputandique morem atque rationem non tenere. Hoc quidem, quod dicunt, in plerisque disputa-tionibus procul dubio fieri oportet. Indefinitus namque inexplicabilisque sermo fiet, nisi interroga-tionibus respon-sionibusque simplicibus fuerit determinatus." Aulus Gellius, *Noctium Atticarum*, 16.2. Translation with minor modification from Aulus Gellius, *The Attic Nights of Aulus* Gellius, trans. John C. Rolfe (Cambridge, Massachusetts: Harvard University Press, 1927), 133.

[18] By the mid sixth century, these contractual forms were excluded from Justinian's revised *Institutes* due to their specialized nature. See Peter Birks and Eric Descheemaeker, *The Roman Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford: Oxford University Press, 2014), 52.

> impress of seals, just preserved through good faith and the cultivation of equity in the soul. But men have put compulsion before ideals. They would rather enforce good faith than await it.[19]

Seneca seems to imply that the *stipulatio* had become *too* convenient, unduly supplanting the role of less formal, non-legal agreements. Even when a trusting relationship was in place, the *stipulatio* was an easily employed gesture of good measure and there was no reason not to use it.

So far, the contractual forms discussed concern the relatively pedestrian agreements made between one citizen and another. Before leaving this section, however, I would like to give some attention to the even graver contracts which could be rendered between an individual and the state or, more precisely, the emperor. The classic example of a relationship involving unwavering fidelity to the land and its people is, of course, found in the military. Whatever society or period of time one looks at, the expectations of a soldier remain constant: he is expected to place the welfare of the state above his own survival instinct; to fight and, if necessary, die for his emperor; and to set aside his own opinions and follow orders with minimal hassle. In the Roman Empire, soldiers were initiated into the ranks of the military through the *sacramentum militare*, the tenets of which are summarized by the fourth-century military expert Vegetius:

> The soldiers, therefore, swear they will obey the Emperor willingly and implicitly in all his commands, that they will never desert and will always be ready to sacrifice their lives for the Roman Empire.[20]

Moreover, evidence in the *Feriale Duranum* – a Roman calendar on military and religious observances – suggests that the oath had to be regularly 'renewed' by being recited annually

[19] "Utinam quidem persuadere possemus, ut pecunias creditas tantum a voentibus acciperent! Utinam nulla stipulation emptorem venditori obligaret nec pacta commentaque impressis signis cusodirentur, fides potius illa servaret et aecum colens animus! Sed necessaria optimis praetulerunt et cogere fidem quam expectare malunt." Seneca, *De Beneficiis*, 3.15.1-2, in L. Annaeus Seneca, *Moral Essays*, vol. 3, ed. John W. Basore (London and New York: Heinemann, 1935). Translated in *Seneca: Moral and Political Essays*, ed. and trans. John M. Cooper and J. F. Procopé (Cambridge: Cambridge University Press, 1995), 252.

[20] Vegetius, *De re militari*, 2.5, trans. in *Vegetius: Epitome of Military Science. Translated Texts for Historians Vol. 16*, trans. N. P. Milner (Liverpool: Liverpool University Press, 2013), 35.

on the 3rd of January and on the anniversary of the Emperor's coronation.[21] It has even been argued that this oath was the passport to assimilation for the manifold ethnic groups spread throughout the Empire, and a means through which they could acquire a right to settle. According to Stefan Esders,

> Roman citizenship was unable to provide the legal basis [for settlement]… but it was their military oath by which they had sworn allegiance to the Roman Emperor. They pledged this oath to recognize the majesty of the Roman people and their emperor, and it tied them into the institutional and legal context of the late Roman army.[22]

All of this, again, was accomplished through a formal exchange in which the soldier affirmed his allegiance and subservience to the Emperor. While the precise verbiage of the oath is lost, the evidence in Vegetius and the *Feriale Duranum* show that it was "recited" (i.e. verbal) and that it presumably followed a rigid formula (it was recited by all soldiers and would have to ensure that all are bound by the same expectations).

1.2 Orality

The *Stipulatio*, like the majority of Roman contracts, was primarily anchored in orality. It was the spoken word, the audible affirmation from the creditor, which constituted the binding agreement between the two parties. This is attested by the fact that most formal contracts could not normally be rendered by the deaf and mute without the assistance and verification of a mediator.[23] Further, while written contracts became steadily more common in the West, they

[21] John Helgeland, "Christians and the Roman Army AD 173-337," *Church History* 43, no. 2 (1974): 151.
[22] Stefan Esders, "Treueidleistung Und Rechtsveränderung Im Früheren Mittelalter," in *Rechtsveränderung Im Politischen Und Sozialen Kontext Mittelalterlicher Rechtsvielfalt*, ed. Stefan Esders and Christine Reinle, *Neue Aspekte Der Europäischen Mittelalterforschung* (Münster: LIT Verlag, 2005), 30-31. Translated in Jonathan R. Tallon, "Faith in John Chrysostom's Preaching: A Contextual Reading" (PhD thesis, University of Manchester, 2005), 85.
[23] A commentary by Ulpian, included in the *Digest* of Justinian, states that the deaf and mute cannot render a *stipulatio*, but a deaf or mute master could make an agreement through his slave who had to be present during the act. Justinian, *The Digest of Justinian* Vol. 4, trans. Alan Watson (Philadelphia: University of Pennsylvania Press, 1985), 45.1. Subsequent references to the *Digest* are taken from this edition. Where the original Latin has been quoted, I have used *The Digest of Justinian*, Vols. 1-4, ed. Theodor Mommsen and Paul Krueger (Philadelphia: University of Philadelphia Press, 1985). Albert C. Gaw concedes the point that verification may have been required, but also argues that other types of contractual agreement, including marriage, were in fact open to the

were generally deployed in tandem with or following an oral agreement. Hans Ankum has observed that the importance of a written record of an oral *stipulatio* grew from the end of the third century CE onwards.[24] A rescript from Paul in the *Digest* of Justinian makes reference to a written deed which was 'preceded by words of stipulation' (*praecessisse verba stipulationis*).[25] Hence, the written contract served as a supplement to the oral agreement, not a substitute. Nevertheless, a combination of widespread illiteracy, time constraints and the difficulty and cost of procuring writing material ensured that purely oral agreements remained commonplace.[26]

The significance of this paradigm will be explored further when I turn to the religious scene. For now, it will suffice to say that the moment the words of agreement are uttered is the moment the indelible and irreversible promise is actualized. It is not, as in some legal traditions, the moment material goods change hands, a physical gesture is made, or a signature is printed. Reinhard Zimmermann points to the rigid formula and specific lexicon of the *stipulatio* as evidence of the decisive role of the verbal affirmation. Juxtaposing the *stipulatio* with modern contractual arrangements, he notes:

> In modern law it is often difficult to determine whether certain declarations still form part of the preliminary negotiations or are already intended as a binding offer of acceptance. In Rome a question in which "*spondes*?" (or a similar verb) was used immediately set an imaginary little warning light flickering, because everybody knew then that, by giving the appropriate answer, he would become contractually bound.[27]

deaf and mute provided they were of sound mind. Albert C. Gaw, "The Development of the Legal Status of the Deaf: A Comparative Study of the Rights and Responsibilities of Deaf-mutes in the Laws of Rome, France, England, and America," *American Annals of the Deaf* 51, no. 5 (1906): 412 and 420-21.

[24] Hans Ankum, "Was *Acceptilatio* an Informal Act in Classical Roman Law," in *Critical Studies in ancient Law, Comparative Law and Legal History: Essays in Honour of Alan Watson*, ed. John Cairns and Olivia Robinson (Oxford: Hart Publishing, 2001), 13.

[25] *Digest*, 45.1.134.

[26] Ernest Metzger, "Roman Judges, Case Law, and Principle of Procedure," *Law and History Review* 22, no. 2 (2004): 264.

[27] Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Capetown: Juta & Co, Ltd, 1992), 69.

The interrogatives and key verbs thus served as discourse markers, signalling a transition from mere conversation to legalistic register. Presumably, this transition would be further signalled by a change in intonation and an emphatic stress on the most consequential words. Indeed, the need to cut through the fog of ambiguity, some anthropologists have argued, lies at the very heart of the ritual and ritualistic discourse. Richard Schechner summarizes that "both human and animal rituals arise where misunderstanding (or missignalling) can lead to catastrophe."[28] Naturally, a contractual obligation represents just such a high-stake scenario and calls for the additional failsafe embedded in the unmistakable language of the *stipulatio*.

Modern studies on the philosophy of language help to shed light on the precise way in which this verbal paradigm played out. The full significance of this dynamic is best understood through the lens of J. L. Austin's research on speech acts. In his influential work, *How to Do Things with Words* (1962), he rails against the positivist view which maintains that language is primarily concerned with producing statements which are either true or false. Instead, he coins the notion of the 'performative utterance' to illustrate the way in which language may do something other than simply describing or reporting empirical reality at the present moment. The performative utterance is made with an ongoing or prospective action in mind – "I declare," "I promise," "I give" and so on.[29] It is uttered not with the intention of describing the present, but with the implication of changing the long-term or immediate future. This distinction is otherwise conceived through the notion of locutionary and illocutionary speech acts. A locutionary act comprises only the uttered word or phrase itself and its most fundamental meaning. An illocutionary act, by contrast, is the consequence the locutionary act is expected to bring about. For instance, if someone is about to go outside wearing only a vest, I might say, "it is cold out there." The locutionary act is a simple description of the weather conditions at

[28] Richard Schechner, "The Future of Ritual," *Journal of Ritual Studies* 1, no. 1 (1987): 5.
[29] J. L. Austin, *How to Do Things with Words: The William James Lectures Delivered at Harvard University in 1955* (Oxford: Clarendon Press, 1962), 9.

that particular moment. The *illocutionary* act, however, could be interpreted as a warning ("you will be cold"), advice ("you might want to take a coat") or a command ("take a coat!"). The difference is neatly summarised by Austin when he describes the locutionary act as 'the performance of an act *of* saying something' and the illocutionary act as the 'performance of an act *in* saying something' (in this example, hoping my friend will revise his choice of clothing).[30] Returning to the *stipulatio*, this distinction becomes critical, for when the promisee utters the affirmation *spondeo*, he is not simply saying he agrees to pay the sum or commit the act stated in the contract but is formally entering into an adamantine agreement enforced by the edifice of Roman legal tradition.

Furthermore, the idea that a verbal utterance can be understood as an act in its own right lies at the very heart of formal rituals – secular and religious alike. This is best demonstrated in Austin's example of the marriage ritual:

> ...the utterance "I do" (take this woman to be my lawful wedded wife), as uttered in the course of a marriage ceremony. Here we should say that in saying these words we are *doing* something – namely, marrying, rather than *reporting* something, namely *that* we are marrying. And the act of marrying, like, say, the act of betting, is at least *preferably*… to be described as *saying certain words*, rather than as performing a different, inward and spiritual, action of which these words are merely the outward and audible sound.[31]

Provided certain circumstantial criteria are met (i.e., that the utterance is made in the context of the marriage ceremony), the words and the action are conflated and indistinguishable. The speech *is* the act.

So far, this chapter has established that Roman legal culture was intensely concerned with the spoken word. In providing this background, I have aimed to lead the reader into a profoundly different world where a person's word of honour meant a great deal. Today, we would justly recoil at the idea of making a legal agreement without some form of tangible proof (a signature on paper). For the Romans, however, as noted by Zimmermann, evidence was

[30] Ibid., 99.
[31] Ibid., 13.

relatively unimportant, and the notion of *fides* (trust, reliability or good faith) was a sufficient guarantee for oral agreements.[32]

1.3 Contractual Elements in Early Christianity

Christianity is a religion built upon the forging (and quite often breaking) of agreements, covenants and promises between man and God. From the very point of creation, God effectively renders an agreement between himself and man, telling Adam and Eve they may eat of any tree in the Garden of Eden bar the Tree of the Knowledge of Good and Evil.[33] This is, one might object, a *command* rather than an agreement, however the very existence of free will already complicates this matter. God has given man life with a condition attached which, if broken, will result in the withdrawal of that life ("for in the day that thou eatest thereof thou shalt surely die").[34] Man is technically free to decline the offer and forfeit the gift they would not have had in the first place. By contrast, a unilateral agreement is made from God to Noah following the Deluge. Here, God promises unconditionally that he will never flood the world again (though other methods of destruction remain on the table):

> … neither shall all flesh be cut off any more by waters of a flood; neither shall there anymore be a flood to destroy the earth… I do set my bow in the cloud, and it shall be a token of a covenant between me and the earth.[35]

This agreement is further consolidated by a specific sign and action which marks the moment the covenant is formed. Another agreement appears in the covenant between God and Abraham in which God pledges to make Abraham a father of many nations provided Abraham is faithful to him:

[32] Ibid., 70.
[33] Gen 2:16-17. Biblical quotations are taken from *The Bible: Authorized King James Version with Apocrypha*, ed. Robert Carroll and Stephen Prickett (Oxford: Oxford World Classics, 1998).
[34] Gen 2:17.
[35] Gen 6: 11-13.

> … walk before me, and be thou perfect. And I will make my covenant between me and thee exceedingly… As for me, behold my covenant is with thee, and thou shalt be a father of many nations.[36]

The importance of the covenant as an institution in early Christianity and Judaism has been trenchantly explored in Walther Eichrodt's *Theology of the Old Testament* who stresses the point that the covenant (Hebrew: '*berit*'), although always instigated by one party – God – was a bilateral agreement which required certain actions from man as well as God.[37] At the heart of salvation history is the sacrificial offer of Christ. The sinfulness of man demanded a cost which is paid vicariously through the sacrifice of Christ. Exactly what is required from man in return – a pious way of life or *sola fide* ("faith alone") - has been the subject of endless debates, schisms and religious wars. However, the fact that *something* is required on the part of man is stressed time and again.[38]

In sum, the incipient Christian faith already possessed a quasi-contractual facet which, as I argue below, lent itself easily to assimilation with surrounding legal cultures such as that of the Roman Empire.

1.4 Baptism as a Contract with God

Of the various covenants and agreements found in Christianity, the rite of baptism remains one of the most enduring. While the examples discussed above were watershed historical events, baptism became a perfunctory part of Christian culture and something which all serious Christians would be expected to undertake. Repetition begets consistency, and it was essential that the baptismal ritual was enacted through a prescribed discourse which ensured that everyone was agreeing to identical tenets. The *stipulatio* was an easily convertible

[36] Gen 17:2-4.
[37] Walther Eichrodt, *Theology of the Old Testament Volume I, Sixth Edition*, trans. J. A. Baker (Philadelphia: The Westminster Press, 1961), 37. On the covenant relationship more generally, see chapter 2, from pp. 36-49.
[38] John 3:16, John 5:24, John 11:40, Acts 16:31 and Romans 10:9.

formula which already had a long pedigree and enjoyed a reputation as a reliable method of solidifying agreements. There was little need to tamper with a winning system.

The correspondence between the baptismal formula and that of the *stipulatio* was too striking to be ignored, either by contemporaries or modern scholars. J. A. Harrill has already explored the issue in some depth through the writings of Tertullian.[39] However, there is more to be said about the particular way in which this correspondence played out as well as the effect it would have had on the catechumen. In the final section of this chapter, I will examine this issue in greater depth, paying attention to the subtext of the formula and its hidden implications.

The baptismal procedure is attested in a number of sources and clearly shows the question-and-answer format with which we are already familiar. One such attestation is found in *The Apostolic Tradition of Hippolytus*:

> Then holding his hand placed on his head, he shall baptize him once. And then he shall say: "Dost thou believe in Christ Jesus, the Son of God…?" And when he says: "I believe," he is baptized again. And again he shall say: "Dost thou believe in the Holy Ghost, and the holy church, and the resurrection of the flesh?" He who is baptized shall say accordingly: "I believe."[40]

The formula is clearly redolent of the *stipulatio*, and this, I argue, would have been recognised by the contemporary participants just as it is recognised by us. The widespread use of the *stipulatio* meant that this particular style of interrogative discourse – even when deployed in a non-legal setting – remained inextricably associated with the idea of a binding irrevocable pledge. Moreover, the *stipulatio's* other concomitant associations would also be silently invoked in the catechumen's mind. Intertextual theory has taught us that a text always exists within a matrix of other texts, making it an "illimitable tissue of connections and associations."[41] To be effective, these associations rely upon and pre-suppose an audience

[39] J. A. Harrill, "The Influence of Roman Contract Law on Early Baptismal Formulae (Tertullian, *Ad Martyras* 3)," *Studia Patristica* 35 (2001): 275-282.
[40] Hippolytus, *The Apostolic Tradition of Hippolytus*, trans. Burton S. Easton (Cambridge: Cambridge University Press, 1934), 47.
[41] Roland Barthes, "Theory of the Text," in *Untying the Text*, ed. R. Young (London: Routledge, 1981), 39.

familiar with the 'father text' (the *stipulatio*), how it relates to the 'daughter' text (the baptismal contract), and the implications encoded within this relationship. In the case of the *stipulatio*/baptism, the implications would include, not least, the stringent penalties for breaking a contract you had unequivocally agreed to. According to Cicero, defaulting on a *stipulatio* would be an open and shut case in the Roman court:

> If anyone, when he has given security, when he has bound himself by one word, does not do what he has rendered himself liable to do, then he is condemned by the natural course of justice without [any scruple from the judge].[42]

For the baptisee, that 'one word' is *credo* (I believe), meaning that he or she has made a pledge to remain steadfast in their faith, with the tacit understanding that failure to do so will incur the wrath of the judge par excellence – God.

This phenomenon of borrowing and transferring the idiosyncratic phraseology from one cultural sphere to another can be understood as a form of *entextualization*. Katherine E. Hoffman has suggested that the written and oral text alike have the "quality of being bounded and moveable between contexts" and, further, that a text's meaning depends upon this very intertextuality.[43] Alluding to Greg Urban's notion of 'meta culture,' she goes on to argue:

> Each reproduction of a bit of culture is 'meta' in that it constantly comments on itself by containing a notion of an ideal or norm which it strives to attain… Both performers and audiences have clear ideas about the evaluation criteria for any given entextualisation, and can assess its success or shortcomings.[44]

The meaning and implications of the baptismal rite is generated through its very engagement with the Roman contract on which it is modelled. By 'reperforming' the basic formula of the *stipulatio* in an entirely different context, the baptismal rite at once relies upon the expectations

[42] "Si quis quod spopondit, qua in re verbo se uno obligavit, id non facit, maturo iudicio sine ulla religione iudicis condemnatu, Si quis quod spopondit, qua in re verbo se uno obligavit, id non facit, maturo iudicio sine ulla religione iudicis condemnatur." Cicero, *Pro Caecina*, 7 In Cicero, *Orations* (*Pro Lege Manilia. Pro Caecina, Pro Cluentio, Pro Rabirio, Perduellionis Reo*) *Loeb Classical Library* No. 198, trans. H. Grose Hodge (Cambridge, MA: Harvard University Press,1927). Translation with minor modifications by the author.

[43] Katherine E. Hoffman, "Culture as Text: hazards and possibilities of Geertz's literary/literacy metaphor," *The Journal of North African Studies* 13, nos. 3/4 (2009): 420.
[44] Ibid.

set up by the *stipulatio* while at the same time modifying and heightening these expectations by introducing God in place of a fellow citizen as the stipulator.

As with the *stipulatio*, the verbal utterance is the definitive moment of the baptismal ritual. This point is underscored by Harrill who notes that, for Tertullian, it is the affirmation of the catechumen which marks the moment the baptismal bond is forged and *not*, as one might think, the moment they are immersed in water.[45] The evidence cited by Harrill is found in Tertullian's treatise *De Resurrectione Carnis* (On the Resurrection of the Flesh) in which he proclaims, *anima enim non lavatione sed responsione sancitur* ('the soul is sanctified not by the bath, but by the answer').[46]

This detail becomes critical when we recall Austin's notion of the speech act – the idea that the utterance of a word or phrase can become the very act it signifies. Austin used the example of the marriage vow to demonstrate the way in which the speaking of words can precipitate a transformation in reality. It is the moment the words 'I do' are spoken and not, say, the moment the groom kisses his bride, which marks the transition from unmarried to married. By the same token, the word *credo*, when said in the appropriate context of the baptismal ritual, and the word *spondeo*, when said in the context of a *stipulatio*, constitutes the very act those words represent. The moment immediately before and after the utterance represent two profoundly different states of reality (unmarried > married, catechumen > Christian, free of obligation > obliged).

As a final point of consideration, I would like to draw attention to the commonalities between the *stipulatio* and the baptismal formula beyond the superficial level of the performed ritual. In fact, much of the internal logic and legal philosophy underlying the *stipulatio* also applied to the rite of Baptism. Soundness of mind, volition and legal agency were of paramount

[45] Harrill, "Baptismal Formulae," 280.
[46] Tertullian, *De Resurrectione Carnis*, 48.11. Parallel Latin and English text in Tertullian, *Treatise on the Resurrection: De Resurrectione Carnis*, trans Ernest Evans (Michigan: S.P.C.K, 1960). See also Harrill, "Baptismal Formulae," 280.

importance in Roman contract law. For instance, it was axiomatic to Gaius that an insane person cannot make an enforceable contract: "It is clear in the nature of things that a lunatic, whether he makes a stipulation or a promise, performs no valid act."[47] By the same self-evident reasoning, "a person who is of an age that he does not yet understand what is being done" was likewise debarred from making contracts.[48] What is quite remarkable, however, is that children could make contracts once they had learned to talk, "for one who can speak is regarded as being able lawfully to stipulate as well as to promise."[49] Nevertheless, the fact that infants did not possess legal agency was recognised and capitalised upon by Tertullian in his polemics against infant baptism. In his treatise *De Baptismo*, he challenges the practice by drawing direct parallels with secular law:

> Let them be made Christians when they have become competent to know Christ. Why should innocent infancy come with haste to the remission of sins? Shall we take less cautious action in this than we take in worldly matters? Shall one who is not trusted with earthly property be entrusted with heavenly? Let them first learn how to ask for salvation, so that you may be seen to have given to one that asketh.[50]

Tertullian's rather minimalist criterion – that they must "learn how to ask for salvation" – would seem to accord with Gaius' view that a child may make contracts if they are capable of intelligible speech, regardless of their other intellectual faculties (or lack thereof).[51] Regardless, it is evident that Tertullian viewed the baptismal pact as a heavenly counterpart to the profane *stipulatio*, and this was clearly reflected in his use of the latter as an analogy for the former.

[47] Justinian, *Digest*, 44:7.1.12.
[48] Ibid., 44:7.1.13
[49] Ibid.
[50] "Fiant Christiani cum Christum nosse potuerint. quid festinat innocens aetas ad remissionem peccatorum? cautius agetur in saecularibus, ut cui substantia terrena non creditur divina credatur? Norint petere salutem, ut petenti dedisse videaris." Tertullian, *De Baptismo*, ed. J. M. Lupton (Cambridge: Cambridge University Press, 1908), 18.5. Translate in Tertullian, *Homily on Baptism*, trans. Ernest Evans (Michigan: S.P.C.K., 1964). See also Harrill's discussion in "Baptismal Formulae," 281.
[51] Indeed, elsewhere Gaius makes it clear that the *paterfamilias* could have his children act in a legal capacity on his behalf, which included making contracts. However, if a child makes an obligation of his own volition, the *paterfamilias* is not bound by that obligation. Regardless, this is evident that children could and did make contracts. Justinian, *Digest*, 50.17.133. See also the discussion in Zimmermann, *The Law of Obligations*, 51-52.

In addition to the *stipulatio*, an even graver parallel may be identified between the baptismal rite and the previously discussed *militare sacramentum*. In his apologetic work *Ad Martyres*, probably written during the late second century, Tertullian draws upon a number of military parallels as a means of reminding the soon-to-be executed Christian prisoners of their duty to God.[52] Equating the Christians to soldiers, he writes:

> We have been called to the military service of the living God since the moment we responded to the words of the Sacrament (*Sacramenti*). No solider goes to war equipped with luxuries, nor does he go forth to the battle-line from his bed-chamber, but from light and narrow tents wherein every hardship and roughness and [unpleasantness] is to be found.[53]

Just as the Roman soldier is admitted into the selective but hardship-ridden ranks of the Roman military through the recitation of the *Sacramentum*, so too is the Christian brought into the sacred but persecuted community of God through the rite of baptism.

This comparison is evoked elsewhere by Tertullian where he deploys it as an apologetic argument against Christian military service. In his treatise *De Corona Militis* (c. 211 CE), Tertullian responds to and extols an instance of Christian military disobedience. The treatise opens with an account of the Christian soldier's defiance:

> The soldiers were coming up wearing their laurel crowns. A certain man there, more the soldier of God, more firm of purpose, than the rest of his brethren who had presumed they could serve two masters, stood conspicuous, his single head untrammeled, his crown hanging idle in his hand, the Christian being already, by his very ordering of himself proclaimed… The murmurs reached the ears of the Tribune, and the person had now quitted his place. Immediately, the Tribune saith, "Why so different from the rest thy dress?" He answered that he might not act with the rest. Being asked his reason, he answered, "I am a Christian."[54]

[52] The dating is based on the text's allusion to events around the year 197 CE. See T. D. Barnes, *Tertullian: A Historical and Literary Study* (Oxford: Oxford University Press, 1971), 38.

[53] "Vocati sumus ad militiam Dei vivi iam tunc, cum in sacramenti verba respondimus. Nemo miles ad bellum cum deliciis venit, nec de cubiculo ad aciem procedit, sed de papilionibus expeditis et substrictis, ubi omnis duritia et inbonitas et insuavitas constitit." Tertullian, *Ad Martyres*, ed. F. Oehler. *Biblioteca Augustana* (Leipzig: 1853). Modified translation from Tertullian, 'An Address to the Martyrs,' trans. C. Dodgson, *Library of the Fathers* 10 (1842), 3.1.

[54] Tertullian, *De Corona Militis*, 1. Translated in Tertullian, *Apologetic and Practical Treatises*, trans. C. Dodgson (Oxford: Parker, 1842).

The soldier is promptly taken away to be tried before the prefects, but his demonstration provided a salutary example for the case against Christians pledging allegiance to the emperor. The soldier tacitly invokes the Biblical prohibition against serving two masters: "No man can serve two masters: for either he will hate the one and love the other; or else he will hold to the one and despise the other. Ye cannot serve God and mammon."[55] Tertullian revisits this issue later in the treatise when he challenges the assumption that a Christian can simultaneously serve God and the Roman army:

> Do we believe that a human sacrament may supersede a Divine one, and that a man may pledge his faith to another lord after Christ? And renounce father and mother and all that are nearest to him, whom the Law teacheth should be honored and loved next to God, whom the Gospel also hath in like manner honored, only not valuing them more than Christ? Shall it be lawful for him to deal with the sword, when the Lord declareth that he that useth the sword shall perish by the sword… And shall he keep watch before those temples which he hath renounced?[56]

From Tertullian's response, a number of issues come to light. For one, the tenets of the Christian faith are at fundamental odds with the expected conduct of a Roman soldier. Most obviously, there is the Christian prohibition against violence which is incompatible with military combat. A Christian is expected to renounce and disassociated himself from other Gods and idols which is problematized by temple guard duty. Finally, the Roman military expected a soldier to put the Empire before his family, whom, according to Biblical teaching, should be honored next to God. However, these incongruous sets of rules are rather secondary to the more glaring absurdity of serving two masters. For Tertullian, a person could not swear allegiance to the Roman army and the army of God anymore than they could swear allegiance to the Roman army and, say, the Parthian army (indeed, such an act would see the perpetrator swiftly executed for high treason). Significantly, Tertullian draws a distinction between a

[55] Matt 6:24. See also Luke 16:13.
[56] *De Corona*, 11.

Christian joining the military and a soldier becoming a Christian. The former is to be prohibited, while the latter is encouraged:

> The very transferring his enrolment from the army of the light to the army of darkness is sin. Clearly if their after-conversion to the Faith findeth any preoccupied in military service, their case is a different one, as was that those whom John admitted to baptism, as was that those most true believers the Centurions, him whom Christ approved, and him whom Peter instructed: though notwithstanding, when the Faith hath been embraced and sealed, a man must either straightaway quit the service, as hath been done by many, or must in every way demur to doing any things against God, which things are not allowed.[57]

In Tertullian's view, while the two pledges – the Roman *sacramentum* and the rite of Baptism – can, at a stretch, be held together, the former must take precedence over the latter. In practice, it would presumably be difficult if not impossible to fulfil the obligations of the *sacramentum* while 'demur[ing] to do any things against God,' making it more likely that a Christian would have to dissolve their military oath.

This is, of course, only one point of view from a Church Father known for his hardline views on Christian doctrine. Indeed, it was commonly upheld that military service was compatible with, and even a *means* of serving God. By the fourth century, when Christianity had become more firmly entrenched within the Roman Empire, there was a clear alignment between serving the Emperor and serving God. Vegetius' account of the *sacramentum* explicitly invokes the Holy Trinity in tandem with the Emperor:

> They [the soldiers] swear by God, Christ and the Holy Spirit, and by the majesty of the Emperor which second to God is to be loved and worshipped by the human race. For since the Emperor has received the name of Augustus, faithful devotion should be given, unceasing homage paid to him as if to a present and corporeal deity. For it is God whom a private citizen or soldier serves, when he faithfully loves him who reign's by God's authority.[58]

Here, it is as if God and the Emperor constitute a single legal party: pledging allegiance to one naturally entails a pledge of allegiance to the other, since the Emperor is anointed and endorsed by God. Previously, we may have compared the absurdity of serving two masters to making a

[57] *De Corona*, 11.
[58] Vegetius, *De re militari*, Book 2.5

contract in which the promiser pledges to pay the same finite 'good' (a lifetime of service) to two different contractors. Now, in the Christianized Empire, this problem is resolved by having these two contractors – God and the Emperor – operate as a single 'legal' partnership.

All of this is to say that the *sacramentum* was an additional type of contract which, alongside the more workaday *stipulatio*, influenced the baptismal rite and the discourse surrounding it. The fact that contemporaries recognized certain common denominators, implications and underlying logic between the two pledges supports the argument that the baptismal rite imported aspects of Roman contract law to carve out its own version of a binding agreement between man and God. The *sacramentum* and baptismal rite both entailed a verbal agreement taken in the context of an asymmetrical power relationship in which the promiser pledges allegiance to a vastly superior ruler. Both agreements are accompanied by a concomitant set of responsibilities and consequences which include an expectation to die for the cause this agreement represents.

In this chapter I have sought to show the ways in which Roman contract law intersected with early Christian ritual through the case study of the baptismal rite. By examining this rite alongside the *stipulatio* and *sacramentum*, I have attempted to show that it was shaped and influenced by these contractual forms and that the similarities were significant enough to be recognized and highlighted by contemporary commentators. It was shown that the *stipulatio* in particular offered a useful formula which was adopted and modified by the early Christian communities. It was further demonstrated that the importance of orality in Roman law bled into Christianity through the conduit of the *stipulatio*, producing the baptismal formula which was built upon an identical paradigm and placed similar emphasis on the binding power of the verbal utterance. As I have shown through the work of Austin, in the baptismal ritual, as in the *stipulatio*, the utterance of words is not only the symbol of an action but *is* itself the action. The *sacramentum* served as an example of a more hierarchical contract between a soldier and his

emperor, and this had evident parallels with baptism which similarly served as an initiation rite, a gateway into an exclusive and privileged community, but a community with onerous expectations on its members. All of this was discussed against the backdrop of a religion which was built on a foundation of covenants and agreements between man and God – a foundation which lent itself easily to integration with the legal culture of the Roman Empire. In the subsequent chapter, I will move from the practical side of this legal interplay to more theoretical territory, looking at some of the ways in which Roman legal language was used as an explicatory devise in early Christian theological writings.

Chapter 2: Property Law and Christian Conceptions of Ownership

The first chapter looked at the way in which Roman legal discourse and specifically the language of the contract filtered into the sphere of Christian ritual. The focus here was on the phenomenon happening 'on the ground' so to speak. Both the legal contract and the baptismal rite were familiar to the eyes and ears of Christians throughout the Empire, and it was this exoteric dimension which allowed catechumens to consciously or subconsciously recognize the link between the two practices, internally conceptualizing the baptismal oath as a contract with God.

This chapter will turn to a different but related area of law, namely that of property law. Using the case study of Augustine, it will be shown that Christian sources often incorporated terminology and concepts from Roman law to explain the nature of ownership in Christianity and the concomitant implications this held for the righteous use of possessions. The chapter will begin by expounding and unpacking some of the relevant concepts found in Roman property, with a particular focus on the different levels of ownership pertaining to slaves and freemen. The chapter will then explore the use of these concepts in a variety of theological treatises, letters and exegetical commentaries by Augustine. In the first instance, I will look at how Augustine viewed earthly property and how he explained his views through the language of Roman property law.

2.1 Property and Ownership in Roman Law

In Roman law, the nature of 'ownership' was a complex matter which hinged upon other factors such as the status of the individual and the nature of the property concerned. To start, the ability to 'own' property in the modern sense of the term was not a universal right in the Roman Empire but was a prerogative reserved for freemen. A slave or *servus* could not

normally own property since he was himself considered property. Thus, anything in his possession and anything acquired by him merely became an adjunct of his master's property.[59] The reasoning behind this is explained by Gaius as follows:

> Anything which our slaves receive by delivery and anything which they acquire, whether on a stipulation or on any other ground, is acquired by us; for a person in the power of another can hold nothing for himself. Hence, if he be instituted someone's heir, the slave cannot accept the inheritance without our direction, and if, at our bidding, he does accept the inheritance, it becomes ours just as if we ourselves had been appointed heirs.[60]

Notwithstanding these curtailments, a slave could hold and make use of property *as if* it were his own. Richard Gamauf explored this matter in some depth in his 2009 study on the nature of the Roman *peculium*.[61] This term referred to property "held by a slave with his master's permission and not registered in the master's personal account books."[62] According to the fourth-century jurist Florentinus, *peculia* need not necessarily be given to the slave by his master, but could be amassed independently by the slave through other parties:

> A *peculium* is made up of anything a slave has been able to save by his own economies or has been given by a third party in return for meritorious services or has been allowed by his master to keep as his own.[63]

Based on this evidence, Gamauf concludes that the *peculium* had a "double nature," officially belonging to the master, yet, on the social level, being "treated as if the slave owned it."[64]

To account for this distinction between provisional and actual ownership, Roman law deployed two different terms, *possessio* and *dominium*. Adolf Berger, in his 'Encyclopedic Dictionary of Roman Law,' summarizes that the former may be understood as the "mere

[59] Andrew Borkowski and Paul Du Plessis, *Textbook on Roman Law*, 3rd edn. (Oxford: Oxford University Press, 2005), 94.
[60] "Igitur quod servi nostri ex traditione nanciscuntur sive quid stipulentur vel ex qualibet alia causa adquirunt, id nobis adquiritur: ipse enim, qui in potestate alterius est, nihil suum habere potest. ideoque si heres institutus sit, nisi nostro iussu hereditatem adire non potest, et si iubentibus nobis adierit, hereditas nobis adquiritur, perinde atque si nos ipsi heredes instituti essemus." Gaius, *Institutes*, II, in *Digest*, Book 41.1.10.1.
[61] Richard Gamauf, "Slaves doing business: the role of Roman law in the economy of a Roman household," *European Review of History – Revue européenne d'histoire* 16, no. 3 (2009): 331-346.
[62] Ibid., 334.
[63] "Peculium et ex eo consistit, quod parsimonia sua quis paravit vel officio meruerit a quolibet sibi donari idque velut proprium patrimonium servum suum habere quis voluerit." Florentinus, *Institutes*, book 11, in *Digest*, 15.1.39. See also the discussion at ibid., 334.
[64] Gamauf, "Slaves doing business," 334.

physical holding of a thing," while the latter refers to absolute ownership, with the concomitant right to determine the fate of the property through reselling or other modes of redistribution.[65] This distinction was crucial because "at times one person may be the owner and another the possessor at the same time."[66]

The alert reader may already have anticipated some of the ways in which the different conceptions of ownership set out above could be applied within a Christian context. For in Christianity too, a careful distinction was made between absolute ownership, which was a divine prerogative, and the mere 'right of use' which was granted to humankind. The singing of the Psalms frequently celebrates God's ultimate dominion over all things on heaven and earth. In Psalm 50, God delivers an oration against the Jews in which he declares:

> For every beast of the forest is mine, and the cattle upon a thousand hills. I know all the fowls of the mountains: and the wild beasts of the field are mine. If I were hungry, I would not tell thee: for the world is mine, and the fulness thereof.[67]

Being the absolute owner of the earth's abundant resources, God asserts his exclusive right to take as he pleases, with no requirement to seek the permission of humankind – the provisional owners.[68] Elsewhere, this distinction is couched in terms of land-owner and sojourners. In Leviticus, God debars the Israelites from selling the land they inhabit: "The land shall not be sold for ever: for the land is mine, for ye are strangers and sojourners with me."[69] This notion that the earth is God's and humankind are simply temporary inhabitants is fundamental to the doctrine of stewardship which places man in the position of "Earth gardener" or "Earth-trustee," making it incumbent upon us to maintain God's property on his behalf.[70] The

[65] Adolf Berger, "Encyclopedic Dictionary of Roman Law," *Transactions of the American Philosophical Society*, 43, part 2 (1953): 636. Cited in Andrea Jördens, "Possession and Provincial Practice," in *The Oxford Handbook of Roman Law and Society*, ed. Paul J. du Plessis et al. (Oxford: Oxford University Press, 2016), 553.
[66] Ibid., 636.
[67] Psalm 50:10-12. See also Psalm 24:1, Psalm 89:11 and Psalm 104:24.
[68] It is through God's mandate than man is given dominion over the animals. Gen 1:28.
[69] Lev 25:23.
[70] Holmes Rolston, "Loving Nature: Christian Environmental Ethics," in *Love and Christian Ethics: Tradition, Theory and* Society, ed. Frederick V. Simmons and Brian C. Sorrells (Washington: Georgetown University Press, 2016), 316.

responsibility of stewardship is closely allied with the related concept of charity - care for the earth's fellow inhabitants – and this will form the bulk of the subsequent discussion on *possessio* and *dominium* in Christian sources.

2.2 *Dominium, Possessio* and *Peculium* in Christian Conceptions of Ownership

Perhaps the most renowned theologian to write on Christian moral obligations is Augustine of Hippo. Like Tertullian discussed in the previous chapter, Augustine exhibits considerable legal learnedness and makes adroit use of this expertise in his writings. In 371, he left his home to study rhetoric at Carthage, a discipline which was always closely related to law by virtue of its emphasis on argumentation and persuasion.[71] Moreover, this early career in rhetoric regularly brought the young man within arm's reach of some of the prominent jurists and advocates in the Roman Empire.[72] His *Epistles* are replete with passing references which show a knowledge of the law greater than that of an ordinary citizen.[73] In *Epistle* 83, he exhibits an understanding of property rights by noting that "whenever a cleric possesses property by the usual law of possession, the property belongs to the church in which he has been ordained."[74] In *Epistle* 115, he attempts to buy some time for a debt-laden farmer by invoking the 'thirty days rule,' a privilege prescribed by the Emperor which allowed a person summoned to court to spend thirty days under light guard to afford them some time to set their affairs in order.[75] Following his accession to the position of Bishop of Hippo in 395, Augustine took on a judicial role of sorts through his new role as a protector of the Christian community. He would visit

[71] Brian Gronewoller, "Augustine of Hippo," in *Great Christian Jurists and Legal Collections in the First Millennium*, ed. Philip L. Reynolds (Cambridge: Cambridge University Press, 2019), 266.
[72] Ibid., 267.
[73] For a full discussion, see Angelo Di Berardino, "Roman Laws," in *Augustine Through the Ages: An Encyclopaedia*, ed. Allan Fitzgerald and John C. Cavadini (Michigan: Wm. B. Eerdmans Publishing, 1999), 731-733.
[74] Augustine, *Epistle* 83, in Augustine, *Saint Augustine Letters Vol. 2 (83-130), The Fathers of the Church Vol. 18*, trans. Wilfrid Parsons (Washington, D.C.: The Catholic University of America Press, 1953).
[75] Augustine, *Epistle* 115.

jails to defend the rights of prisoners, he would intervene to protect criminals from excessive torture or premature execution and would even arbitrate in legal disputes among Christians.[76] As a bishop, Augustine's duties would also have included the *episcopalis audientia* ('audience of the bishop'), a particular type of private arbitration whereby a bishop could act as a judge on civil matters.[77]

Augustine was raised in a decidedly Roman educational milieu, and the knowledge and intellectual skills he had acquired during these formative years would stay with him during his heyday as a Church Father. As summarized by E. M. Atkins and R. J. Dodaro, "Augustine transferred his allegiance when he converted, but he did not abandon his weapons."[78] His adroit command of the law was one such weapon and is in prominent display throughout his oeuvre of theological works. However, scholarly attention on this particular facet of his works has been limited and geared more towards his contributions to the grand legal models of the *lex aeterna* (eternal law), the *lex temporalis* (temporal law) and the relationship between divine and earthly government in *De civitate Dei* (The City of God) – none of which are of interest to me here. Less attention has been paid to Augustine's use of the law on a more microcosmic scale. These include various instances in which he makes passing reference to legal concepts for the purposes of expounding an ostensibly unrelated theological or moral question. A dated but still relevant study is that of Francesco Lardone, who painstakingly quarried a selection of Augustine's works for any meaningful legal references.[79] The study found that Augustine's legal knowledge enveloped almost every branch of the law: constitutional, penal, public, private, substantiative and the law of persons.[80] The discussion which follows will revisit this

[76] Peter Brown, *Augustine of Hippo: A Biography* (Berkley: University of California Press, 1967), 189.
[77] Caroline Humfress, "Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence," *Journal of Early Christian Studies* 19, no. 3 (2011): 396.
[78] Augustine, *Political Writings: Cambridge Texts in the History of Political Thought*, ed. E. M. Atkins and R. J. Dodaro (Cambridge: Cambridge University Press, 2001), xv.
[79] Francesco Lardone, "Roman Law in the Works of St. Augustine," *Georgetown Law Journal* 21 (1933): 435-456.
[80] Ibid., 435.

study and delve into a further analysis of some of Lardone's examples, specifically those which relate to Augustine's use of the property law concepts set out in the start of this chapter.

The first example comes from Augustine's *Tractatus in Iohannis Evangelium* ('Tractates on the Gospel of John'), a collection of 124 discourses which would have been delivered as homilies or sermons sometime between 405 and 408 CE.[81] *Tractate 6* is an exegesis on John 1:32-33, but digresses into a visceral aspersion against the Donatists and, specifically, their belief that baptism could not be performed by *traditores* (clergy who had surrendered the Scriptures during the times of Roman persecution).[82] Augustine instead argued that the power of baptism lies in the sacrament itself, and that the moral state of the officiating priest has no bearing on the legitimacy of the rite. "Just as when a good man and a better man baptize," he argues, "one man does not receive a good baptism and the other a better one."[83] The Donatists faced various penalties under Roman law, including the confiscation of their churches and estates – something which Augustine had previously opposed but now endorses.[84]

In responding to the Donatist's protests against what was, in their view, harsh and unjust punishments, Augustine concurrently invokes the distinction between divine and temporal law and, more subtly, the different conceptions of ownership as they appear in Roman law. The Donatist's specifically complain about the confiscation of their country houses, to which Augustine replies:

> By what right do you claim the country houses? By divine or by human right? Let them answer that we have divine right in the Scriptures, human right in the laws of kings. By which does each man possess what he possesses? Is it not by human right? For by divine right, ["the earth is the Lord's and the fulness thereof"] [Psalm 24:1]. And yet by human right he says, "This country house is mine, this city house is mine, this slave is mine." By human right, then, by the

[81] See Marcela Andoková and Robert Horka, "The Chronology of Augustine's *Tractatus in Iohannis Evangelium* 1-16 and *Enaarrationes in psalmos* 119-133 Revisited," *Vox Patrum* 72 (2019): 149-170.
[82] On the Donatists and their view on baptism, see Gavril Andreicut, "The Church's Unity and Authority: Augustine's Efforts to Convert the Donatists" (PhD thesis, Marquette University, 2009), 75-76.
[83] Augustine, *Tractates on the Gospel of John 1-10: The Fathers of the Church Vol. 78*, trans. John W. Rettig (Washington, D.C.: The Catholic University of America Press, 1988), 6.8.
[84] *Epistle* 93, *Saint Augustine Letters Vol. 2*, 58 n. 3.

> right of the emperors. Why? Because God has distributed these very human rights to the human race through the kings and emperors of the world.[85]

Here, Augustine posits a hierarchy of ownership whereby the right to possess property trickles down from the ultimate divine law produced by God to the temporal law (*lex temporalis*) produced by man. According to divine right, *all things* are owned by God, however, God has effectively entrusted or 'loaned' these things to man. This loan is, in the first instance, to the kings and emperors who are tasked with the dispensation of these resources to the rest of the human race. This responsibility carries with it the prerogative to take back or withhold the very same resources. Pre-empting their objections to this, Augustine reminds them if they choose to possess by human right, they must respect the human law:

> If you wish to possess by human right, let us recite the laws of the emperors; let us see if they wish anything to be possessed by heretics. "But what has the Emperor to do with me?" It is according to his right that you possess the earth. Or take away the rights of emperors and who dares to say, "That country house is mine or that slave is mine or this city house is mine."[86]

The citizen's right to possess is contingent upon and inextricably linked to the Emperor's right to distribute this property. Indeed, as Augustine previously suggests, even the emperor does not own this property since "the earth is the Lord's" according to divine law. Augustine continues:

> But if the men have received the rights of the kings in order that these possessions might be kept, do you wish us to recite the laws that you might

[85] "Quo iure defendis villas? Divino an humano? Respondeant: Divinum ius in scripturis habemus, humanum ius in legibus regum. Unde quisque possidet quod possidet? Nonne iure humano? Nam iure divino, "Domini est terra et plenitudo eius"; pauperes et divites Deus de uno limo fecit, et pauperes et divites una terra supportat. Iure tamen humano dicit: Haec villa mea est, haec domus mea, hic servus meus est. Iure ergo humano, iure imperatorum. Quare? Quia ipsa iura humana per imperatores et reges saeculi Deus distribuit generi humano." Augustine, *Sancti Avrelii Augustini: In Iohannis Evangelium Tractatus CXXIV*: *Corpus Christianorum Series Latina XXXVI*, ed. D. Radbodus Willems (Turnhout: Brepols, 1954), 6.25.2. Translation with minor corrections from Augustine, *Tractates on John*, 152.

[86] "Si iure humano vultis possidere, recitemus leges imperatorum; videamus si voluerunt aliquid ab haereticis possideri. Sed quid mihi est imperator? Secundum ius ipsius possides terram. Aut tolle iura imperatorum, et quis audet dicere: Mea est illa villa, aut meus est ille servus, aut domus haec mea est?" *Iohannis Evangelium Tractatus*, 6.25.3. Translated in Augustine, *Tractates on John*, 152.

> delight that you have even one garden and that you may ascribe it solely to the clemency of the dove that it is even permitted you stay there?[87]

Here, an example of a physical property – a garden – is invoked to illustrate the position of man as a mere sojourner (cf. Lev 25:23) who is temporarily permitted to inhabit the earth by the goodwill of the 'landlord' – the dove or Holy Spirit. Finally, returning once again to the question of the Donatist's subservience to the temporal ruler, Augustine has this to say:

> "But what have we to do with the Emperor?" But I have already said, it is a question of human right. And yet the Apostle intended the kings be served, he intended that the kings be honoured; and he said, "Honour the [ruler][88]" [1 Peter 2:17]. Do not say "What have I to do with the king?" What then have you to do with a possession? Through the [laws] of kings possessions are possessed. You have said, "What have I to do with the king?" Do not mention your possessions; for you have based your claim on the very human rights by which possessions are possessed.[89]

Augustine concludes the argument by creating a dichotomy whereby the Donatists must choose between submitting to the temporal ruler or simply abandoning any right to have possessions.

Having discussed Augustine's views on the nature of ownership in relation to divine and temporal law, we come to the question of how this relates to Roman law. At the surface level, there is Augustine's careful use of terminology which, as with anyone well-versed in rhetoric, is never an inconsequential matter. Notably, the property of man is always discussed using the terms of possession and never of absolute ownership: "Si iure humano vultis *possidere*…" ("If you want to *possess* by human law…"); "Per iura regum possidentur possessiones" ("Through the laws of kings, *possessions* are *possessed*"). Neither the term *dominium* nor its cases appear in these passages, not even in relation to the emperors since they

[87] "Si autem ut teneantur ista ab hominibus, iura acceperunt regum, vultis recitemus leges, ut gaudeatis quia vel unum hortum habetis, et non imputetis nisi mansuetudini columbae, quia vel ibi vobis permittitur permanere?" *Iohannis Evangelium Tractatus*, 6.25.4. Translated in Augustine, *Tractates on John*, 152-53.

[88] 'Regem' here is commonly translated as 'king,' but 'ruler' would seem to be a more suitable translation which encompasses all temporal rulers, kings and emperors alike.

[89] "Sed quid nobis et imperatori? Sed iam dixi, de iure humano agitur. Et tamen apostolus volvit serviri regibus, voluit honorari reges, et dixit: Regem reveremini. Noli dicere: Quid mihi et regi? Quid tibi ergo et possessioni? Per iura regum possidentur possessiones. Dixisti: Quid mihi et regi? Noli dicere possessiones tuas; quia ad ipsa iura humana renuntiasti, quibus possidentur possessiones." *Iohannis Evangelium Tractatus*, 6.26.1. Translated with minor modifications in Augustine, *Tractates on John*, 153.

too are restricted to mere *possessio* according to divine law.[90] Given the legal context of the passage more broadly (i.e., the fact that it concerns the legitimacy of the emperor using the arm of the law to punish heretics), I would suggest that Augustine is consciously deploying the terms of *possessio* in a specifically legal sense, as opposed to a more general, non-technical sense.

Aside from vocabulary, the discussion of the hierarchical relationship between God, the interstitial emperor or king and the general population, as well as the implications this has for property, is redolent of the hierarchy between slaves and freemen in the context of Roman property law. It was previously shown that a slave in Roman law can never *own* property (*dominium)* but can only *possess* property (*possessio*) in the sense of temporarily holding, maintaining or enjoying the right to use property which is ultimately owned by his master. Seen through this lens, humankind are mere slaves who, by the clemency of God, have been given the right to hold and use his property. Moreover, as was previously discussed by Gamauf, Roman slaves could, with their master's permission amass *peculium*: funds or other resources which the slave could independently administer and even use in trade and negotiation with third parties.[91] Furthermore, a slave could redistribute his *peculia* to other, typically lower-ranking slaves in the same *domus* (household). In a Letter to his friend Paternus, Pliny the Younger (61 – c. 113 CE) speaks of his practice of affording his slaves the liberty to redistribute their possessions (presumably, here, *peculia*):

> The slaves issue their instructions and requests according to their wishes, and I fall in with them as though under the orders. They allocate, bestow, and bequeath their possessions, with the provisio that they are confined to the household, for the household is for the slaves a sort of republic.[92]

[90] Lardone, "Roman Law in St Augustine," 438.
[91] Gamauf, "Slaves doing business," 332. See also Andrew Lewis, "Slavery, Family, and Status," in *The Cambridge Companion to Roman Law*, ed. David Johnson (Cambridge: Cambridge University Press, 2015), 156.
[92] Pliny the Younger, *Pliny the Younger: Complete Letters*, trans. P. G. Walsh (Oxford: Oxford World Classics, 2006), 8.16.

This was evidently still common practice even by the sixth century, where it is attested in the *Institutiones Justiniani* (Institutes of Justinian).[93] The notion that a slave could, with his master's permission, redistribute his *peculia* to other slaves within the same household can be compared to the divinely ordained rights of kings and emperors to redistribute property unto their own underlings, namely the citizen body. Within this ontology, the earth becomes the insular closed system – the household or republic – within which this property can freely circulate, change hands, become confiscated or be passed on through the conduit of inheritance, all while ultimately belonging to God. God's position may be likened to that of the *dominus* or lord of the household, while the emperor may be viewed as a *servus ordinarius* (a senior slave with special privileges and who usually owned other slaves).[94] To this end, then, the relation between the divine and temporal law can be viewed as a fractal pattern whereby the emperor's dispensation of property is a microcosmic iteration of the original divine act in which God conferred the earth to man. Bringing this back to Augustine, the crux of his counter-argument to the Donatists' protests against the confiscation of their property lies in the fact that no man has claim to complete ownership of anything on earth. Furthermore, the property of the Donatists is only held on the basis of human law or the law of the emperors and *that* law is only permitted to exist by the clemency of God who orders man to "honor the ruler."[95] All property is effectively *peculia* which God has entrusted to the kings and emperors who in turn entrust it to man, but with the caveat that the emperor can withdraw it at any time by virtue of the rights God has given him.

The above discussion is, admittedly, speculative, however it gains credence when viewed alongside other examples in which Augustine explicitly invokes the analogy of slavery to illustrate Christian conceptions of ownership. A notable occurrence is found in his

[93] Justinian, *The Institutes of Justinian*, trans. J. B. Moyle (Oxford: Oxford University Press, 1913), 2.20.20.
[94] On the *servus ordinarius*, see Gamauf, "Salves doing business," 337.
[95] Phil 1.27.

Enarrationes in Psalmos 49 ('Expositions on Psalm 49'), in which he discusses God's ownership of both wild and domesticate creatures:

> All those you do not own [*possides*] are mine, and these that you do own [*possides*] are mine too. If you are my [slave][96], all your personal property [*peculium*] belongs to me. If the property [*peculium*] a slave has gained for himself belongs to his master, it cannot be the case that property [*peculium*] the Master has created for the servant does not belong to its Creator. The forest animals that you have not caught are mine, and so are the cattle that graze upon the mountains, and the oxen that feed at your manger. They are all mine, because I created them.[97]

As Lardone notes, the terminology in this passage is particularly technical and undeniably infused with Roman law. As before, the notion of 'ownership,' when it pertains to man, is always denoted with *possides*, laying bare its transient and provisional nature.[98] In this instance, however, the legal context of *possides* is made clearer by the subsequent reference to *peculium* – an unambiguously legalistic term. Boulding's translation of *peculium* as 'property' is reasonable enough given the limitations of translation (there is no closer English equivalent to my knowledge), however it falls short of capturing what is *really* being said. By equating human possessions to *peculia*, Augustine is using the language of Roman law to make a fundamental statement about man's place in relation to God and the limitations of material wealth. The acquisition of wealth and personal resources – so paramount in Roman society – is ultimately illusory, since all things are part of a fleeting lease from God. Having established Augustine's view about the nature of ownership and property, in the next section I will briefly consider the implications these views had for the *use* of property.

[96] Boulding translates '*servus'* as servant with a footnote offering 'slave' as an alternative. However, *servus* invariably referred to a bondservant or one who is owned and subservient to a master. 'Servant' would mistakenly denote a freeperson.

[97] "Mea sunt illa non possides, mea sunt ista quae possides. Si enim servus meus es tu, totum peculium tuum meum est. Neque enim est peculium Domini quod sibi servus comparavit, et non erit peculium Domini quod ipse Dominus servo creavit. Ergo meae sunt bestiae silvae quas tu non cepisti; meau sunt et pecora in montibus quae sunt tua, et boves qui sunt ad praesepe tuum: omnia mea sunt, quia ego creavi ea." Augustine, *Enarrationes in Psalmos 49*, 17. In *Patrologiae cursus completes Vol. 36*, ed. J. P. Migne (Paris: Imprimerie Catholique, 1845), 576. Translated in Augustine, *Expositions of the Psalms Vol* 2, *Pslams 33-50*, trans. Maria Boulding (New York: New City Press, 2000), 396-97.

[98] Lardone, "Roman Law in St Augustine," 438.

2.3 The Implications for the Use of Wealth

It was shown above that Augustine viewed all things as belonging to God, with man being a mere temporary holder. Where does that leave us? What does it really mean to 'possess' something? How much autonomy over his property does man really have? If God has *dominium* over all things and we simply hold them as *peculia*, it stands to reason that any injunction from God on the use of these resources must be observed, just as a slave would need to respect his master's order on the use of his possessions. In the case of Christianity, the most significant directive on the use of property would seem to be that of charity, both in the sense of giving unto the Church and the poor.

The concept of charity in Christian writings within the late Roman Empire has attracted a great deal of attention in recent scholarship and merits some coverage here. Part of this focus has stemmed from the fact that the Christian conception of charity sits in uncomfortable antithesis to Roman society, the cogs of which were turned by the amassment of individual wealth. In an article of 1983, Alex Scobie points to the ostentatious wealth of the Roman Emperor as a common source of tension between the ruler and his people. Following the fire of Rome in 64 CE, Nero constructed a palace covering 400 acres of land, rendering thousands of regular citizens homeless and earning the emperor an unfavorable reputation.[99] Paul Veyne argues in a similar vein that, while Christians never forgot the great contrast between rich and poor, pagans preferred to give the matter little attention. "Thinking too much about the poor and a possible reversal of conditions," he suggests, "is politically demoralizing."[100] Peter Brown, in his seminal study on wealth in the late Roman Empire, notes that, at least on a superficial level, "classical society did not invest acts of generosity to the poor with the same,

[99] Alex Scobie, "Rich and Poor in the Roman World (B.C. 50-A.D. 150)," *The Classical Outlook* 60, no. 2 (1982-83): 44.
[100] Paul Veyne, *Bread and Circuses: Historical Sociology and Political Pluralism*, trans. Brian Pearce (London: Penguin Publishing, 1990), 20.

high ideological charge as did Jews and Christians."[101] While charity was not unheard of among pagans, it lacked the "sense that humanity was most vividly summed up through starkly asymmetrical relations," and the emphasis on giving to the perceivably *inferior* and *helpless* which is so central to Christian charity.[102] Throughout this work, Brown is judicious in acknowledging the acts of charity among non-Christians and dismantling the stark dichotomy between mercenary pagans and magnanimous Christians largely painted by Christian apologists. Nevertheless, charity acquires a new potency during the centuries following the integration of Christianity into the Roman Empire and this is reflected in certain Christian sources.

Returning to Augustine, we find that he regarded legitimate possession of property as a prerogative of the just person. In his lengthy *Epistle 93*, Augustine again challenges the Donatists on their complaints against the confiscation of their property, but this time shifts the point of emphasis to their moral status and the implications this has for their right to possess:

> And although earthly goods are not rightly possessed by anyone except by divine law, by *which the just possess all things*, or by human law, which is the power of the earthly [rulers], and since you wrongly call yours goods which you *do not possess justly*, and which you have been ordered by the laws of earthly kings to give up, it will be useless for you to say: "We have toiled to amass them," when you read the text: "The just shall eat the labors of the sinners [Prov 13:22].[103] [Emphasis added]

This passage has been toiled over by numerous scholars, some of whom have interpreted it as evidence of Augustine's 'theocratic communism' or 'Christian socialism,' while others have suggested that Augustine simply regards private property as the domain of temporal rather than divine law.[104] D. J. Macqueen suggests that the 'just' here tacitly refers to the prelapsarian state in which Adam, once pure, possessed the earth. Following the fall, however, man became

[101] Peter Brown, *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350-550 AD* (Princeton: Princeton University Press, 2012), 59.
[102] Ibid., 59-60.
[103] *Epistle* 93, *Saint Augustine Letters Vol. 2*, 103.
[104] D. J. MacQueen, "St. Augustine's Concept of Property Ownership," *Recherches augustiniennes et patristiques* 8 (1972): 206.

corrupt and the temporal law came about as a necessary system to curtail the liberty of those who would bring disorder to society.[105] The Donatists, being culpable in disrupting the correct order by virtue of their heresy, are thus unjust and thus have no legitimate claim to their property.

If being just is a prerequisite to the legitimate holding of property, it follows too that the person must be just in the use of that property. In *Epistle* 153, Augustine uses legal language to distinguish between rightful and wrongful ownership, suggesting that this hinges upon how the possessor uses the property:

> And now if we look carefully at what is written: "The whole world is the wealth of the faithful man, but the unfaithful one has not a penny," [Prov 17:6] do we not prove that those who seem to rejoice in lawfully acquired gains, and do not know how to use them, are really in possession of other men's property? Certainly, what is lawfully possessed is not another's property, but lawfully means justly and justly means rightly. He who uses his wealth badly possesses it wrongly, and wrongful possession means that it is another's property. You see, then, how many there are who ought to make restitution of another's goods, although those to whom restitution is due may be few, wherever they are, their claim to possession is in proportion to their indifference to wealth.[106]

It is important to stress here that the legal language is being used metaphorically. He has already repeatedly stressed the point that possession of property stems from the caprice of the temporal ruler and is not *literally* suggesting that only the just have a right to possess.[107] Rather, he is using legal language to make a qualitative distinction between possessing poorly and possessing well, with the suggestion that latter category, by virtue of their detachment from their wealth and their willingness to share it, have – paradoxically – a greater claim to their possessions than the avaricious men who possess poorly.

A final point on the use of riches and possessions may be found in Augustine's treatise *De Doctrina Christiana* ('On Christian Doctrine'). As part of this exposition, Augustine draws

[105] Ibid., 207.
[106] *Epistle* 153, *Saint Augustine Letters Vol. 3*, 302.
[107] MacQueen, "St. Augustine's Concept of Property Ownership," 211.

a clear distinction between the use of worldly goods as a means to a greater end (*uti*) and the use of such goods simply for one's own enjoyment (*frui*).[108] He writes,

> For to enjoy a thing is to rest with satisfaction in it for its own sake. To use, on the other hand, is to employ whatever means are at one's disposal to obtain what one desires, if it is a proper object of desire […] We have wandered far from God; and if we wish to return to our Father's home, this world must be used, not enjoyed, that so the invisible things of God may be clearly seen, being understood by the things that are made – that is, by means of what is materially and temporary we may lay hold upon that which is spiritual and eternal.[109]

Possessions, then, are best understood as instruments which, when used judiciously and charitably rather than horded for personal pleasure, serve as the means through which the rift between man and God can be bridged. If we consider this against the backdrop of Augustine's conceptualization of human property as *peculia* which ultimately belongs to God, the expectation to use the property responsibly and in accordance with the master's wishes becomes all the more important. The previous distinction between possessing something well versus possessing it poorly hinges on the question of whether the possession is being used in the way the master intended or for selfish enjoyment. As in the Roman master-slave relation, man only possesses property by virtue of the clemency of his master and this sober fact should remain at the forefront of his conscience anytime he presumes to make use of these possessions.

Overall, this chapter has sought to demonstrate the way in which Augustine incorporated elements from Roman property law as a means of elucidating the Christian conception of ownership. The degree of his engagement with Roman law varies. In some instances, he simply makes use of idiosyncratic Roman legal terminology to silently invoke a comparison with the law. In other cases, he will make an explicit comparison such as that between the Roman master-slave relation and the relation between man and God. However, all of these engagements are geared towards a common objective of stressing man's place in relation to God, the fact that all things are ultimately owned by God and are being temporarily

[108] Ibid., 200 n. 47.
[109] Augustine, *On Christian Doctrine*, trans. D. W. Robertson (New York: The Liberal Arts Press, 1958), 4.4.

held by man, and that there is an expectation to use earthly possessions responsibly and in accordance with the divine will.

Chapter 3: Family Law, the Trinity and Christian Apologetics

In this final chapter, I propose to look at one further area of private law, namely the broad area of family law. The Roman Empire was, of course, a patriarchal and patrilineal society in which the father of the household wielded supreme authority over his wife, children and other dependents. However, the hierarchy was not without its complexities and there were various systems in place which allowed other members of the family to act on the father's behalf and, with certain reservations, enjoy a degree of legal autonomy. Christianity, too, is a religion in which the figure of the Father occupies a prominent and authoritative position. The notion that there is a supreme Father to whom we are all subordinate was readily assimilable by Roman society, as was the idea of a son acting on a father's behalf. In this chapter, I will consider the ways in which Christian authors drew on ideas found within Roman family law to explicate complicated theological concepts, such as the legitimacy of divine monarchy and the nature of the Trinity. I will begin as usual with a section dedicated exclusively to explaining some of the pertinent notions in Roman law before turning to the Christian sources themselves, this time using the writings of Lactantius (c 250-325 CE) as a case study. It will be argued that this author, like Tertullian and Augustine discussed previously, utilized the language of Roman law for rhetorical and argumentative purposes and did so during a time in which Christianity's status in the Empire was far from certain.

3.1 The Roman *Domus, Pater Familias* and *Patria Potestas*

The *domus* ('household') was one of the basic building blocks of Roman society, and the effective management of individual *domus* was paramount to ensuring that communities as a whole could function smoothly. Each *domus* was, in effect, its own administrative unit. In a way, it was a microcosmic replication of the Roman Empire as a whole, with the *paterfamilias*

('Father of the Family') exercising supreme authority over the household and its constituents just as the Emperor wields authority over the Empire. We may recall from the previous chapter Pliny the Younger's remark that the household is "a sort of republic" within which property could be freely distributed and passed on at the behest of the master of the household.[110]

The *paterfamilias* took pride of place within the *domus*, acting as both the ruler of the household and its main representative in the public eye. Indeed, the *domus* itself was defined primarily through reference to the *paterfamilias*. The various different dwellings in which Roman families could reside gave rise to the question as to what exactly qualified as a *domus*.[111] Ulpian opined that the term *domus* and the legislation protecting it "applies to any abode in which a head of a household may live, although he does not have his place of residence there."[112] The label *domus*, then, was mobile and even multitudinous, travelling with the *paterfamilias* and applying to any dwelling over which he exerted dominion.

The inhabitants of the *domus* – namely, the *paterfamilias'* family and slaves – were likewise under his control. At the surface level, this fact was signalled by naming practices. The family's namesake typically stemmed from the *paterfamilias*; the sons would take their father's name while the daughters would take the feminine form of the same name.[113] Male citizens typically held three names: the *praenomen* ('personal name'), the *nomen gentilicium* ('gentile name,' signalling the clan to which he belongs) and the *cognomen* (used to identify a sub-branch within the clan).[114] To take the example used by Myles McDonnel, a man by the name of Publius Cornelius Scipio (*praenomen*, *nomen gentilicium* and *cognomen*, respectively) might name his first-born son after his own *praenomen*, meaning that son would be identically

[110] Pliny the Younger, *Letters*, 8.16.
[111] Richard P. Saller, "Pater Familias, Mater Familias, and the gendered Semantics of the Roman Household," *Classical Philology* 94, no. 2 (1999): 186.
[112] "Ego puto ad omnem habitationem, in qua pater familias habitat, pertinere hanc legem, licet ibi quis domicilium non habeat." Justinian, *Digest*, 47.10.5.
[113] Stephen Wilson, *The Means of Naming: A Social and Cultural History of Personal Naming in Western Europe* (London: UCL Press, 1998), 4, 15.
[114] Myles McDonnell, *Roman Manliness: 'Virtus' and the Roman Republic* (Cambridge: Cambridge University Press, 2006), 175.

named Publius Cornelius Scipio. Subsequent sons may be distinguished by different *praenomina* but would retain the *nomen gentilicium* and *cognomen* (e.g., Lucius Cornelius Scipio).[115] However, from the first century CE it became common for a father to bestow his *praenomen* onto *all* of his sons.[116] Daughters, by contrast, did not normally hold a *praenomen*, but instead took the feminine form of the *nomen gentilicium*. Hence, the daughters of Publius Cornelius would carry the name Cornelia and might be differentiated by descriptors such as *maior* and *minor* (older and younger) or by order of birth – *prima*, *secunda*, *tertia* and so on.[117] The nominal bond between fathers and daughters was especially tenacious and may, on occasion, have trumped the convention whereby a woman would take the name of her husband. Judith P. Hallett has noted that a woman may have carried her father's name "from the cradle through however many marriages to the grave," using her father and not her husband as the perpetual identifying referent.[118]

These onomastic conventions carry considerable implications for the Roman family. Each member of the *domus* bears a figurative emblem of the *paterfamilias* in the form of their personal name, which was at once a mark of personal identity and a tag of belonging or, more appropriately, possession. Each family member was, in a sense, an adjunct of the patriarch who, in turn, had a responsibility to control and moderate their actions. An infraction committed by a member of the household reflected poorly on the patriarch and would often entail legal culpability on his part.[119] In the case of a child causing damage to another party, the practice of noxal surrender afforded the *paterfamilias* the option of either surrendering the

[115] Ibid., 175.
[116] Wilson, *The Means of Naming*, 6.
[117] McDonnell, *Roman Manliness*, 175.
[118] A practice which was common until the time of Augustus (63 BCE- 14 CE) but by no means unheard of thereafter. Judith P. Hallett, *Fathers and Daughters in Roman Society: Women and the Elite Family* (Princeton: Princeton University Press, 1984), 67.
[119] Andrew Lewis, "Slavery, Family, and Status," in *The Cambridge Companion to Roman Law*, ed. David Johnson (Cambridge: Cambridge University Press, 2015), 158.

dependent to the injured party or paying for the damage himself.[120] Justinian, however, notes that the act of surrendering a child was frowned upon in his own time.[121] Hence, the conventional practice was for the father to carry the burden of responsibility for the transgressions of his children.

The authority the *paterfamilias* held over his progeny was termed the *patria potestas* ("paternal power") and its scope was considerable, falling only slightly short of the control a master had over a slave. The extent of this control was recognized by contemporaries who saw the father's dominion over his children as something idiosyncratic to the Roman people. So writes Gaius:

> Our children whom we have begotten in lawful marriage are under our control. This right is peculiar to Roman citizens, for there are hardly any other men who have such authority over their children.[122]

Most strikingly, this control included *ius vitae necisque* ("power of life and death") which, in theory, permitted a father to put a son or daughter who is still under his *potestas* to death.[123] The extent of this right has been called into question in recent years[124] and, in practice, there were clearly limited circumstances under which a father could kill his progeny. An incomplete text of Gaius, the *Fragmentum Augustoduniense*, states that filicide, although enshrined in the Twelve Tables, could not be done *sine iusta causa* ("without just cause").[125] Indeed, William V. Harris has suggested that the prerogative was rarely exercised, pointing to only a handful of examples which were usually in response to a son attempting to seize power or showing

[120] For a full discussion on liability and noxal offences, see David Johnston, "Limiting Liability: Roman Law and the Civil Law Tradition," *Chicago-Kent Law Review*, vol. 70, no. 4 (1995): 1515-1538.
[121] Justinian, *Institutes*, 4.8.7.
[122] "Item in potestate nostra sunt liberi nostri, quos iustis nuptiis procreavimus. Quod ius proprium civium Romanorum est (fere enim nulli alii sunt homines, qui talem in filios suos habent potestatem, qualem nos habemus)." Gaius, *Institutiones*, 1.55. Translated in *The Institutes of Gaius: Text with Critical Notes and Translation*, ed. and trans. Francis de Zulueta (Oxford: Clarendon Press, 1904).
[123] Richard P. Saller, *Patriarchy, Property and Death in the Roman Family* (Cambridge: Cambridge University Press, 1994), 115.
[124] See for example John Curran, "*Ius vitae necisque*: the politics of killing children," *Journal of Ancient History*, vol. 6, no. 1 (2018), 111-35.
[125] *Fragmentum Augustoduniense* 4.85-86, in *Collectio librorum iuris anteiustiniani*, ed. Paul Krueger, Theodor Mommsen and Wilhelm Studemund (Berlin: Apud Weidmannos, 1923), 160. Quoted in Raymond Westbrook, "*Vitae Necisque Potestas*," *Historia: Zeitschrift für Alte Geschichte* 48, no. 2 (1999): 206.

cowardice in battle.[126] A daughter could purportedly be killed by her father for committing adultery, but here too, certain conditions had to be met: according to Ulpian, "this power should be available to the father if and only if he should catch his daughter actually engaged in the indecent act."[127] For my purposes, the question as to how preponderant this practice was is beside the point. Rather, it suffices to say that the existence of righteous filicide, even on paper, is emblematic of the way in which the father-child relationship was conceptualized in the Roman mind.

Beyond the *ius vitae*, the *patria potestas* carried other rights. Most significantly, as summarised by John Crook, he enjoyed "full legal ownership of everything the family has, full power of alienation, and full power to dispose of the whole by will."[128] If fathers paid the price for their children's misdeeds, it stood to reason that they would reap the benefits of any gains incurred by the same children. Andrew Lewis summarises that subordinate members of the family were devoid of legal capacity in private law. What limited legal capacity they did enjoy was held at the discretion of the patriarch, and thus, "any property they acquired was acquired for him and any benefits under contract accrued to him."[129] In this respect, the father-child relation was comparable to the master-slave relationship delineated in the previous chapter. In both cases, it was axiomatic that goods amassed by the subservient party were ultimately the property of the father or master, even if it was provisionally held and used by the child or slave. According to Gaius:

> Anything which our children, who are under our control, as well as anything which our slaves acquire by sale, delivery, or stipulation, or in any other manner

[126] William V. Harris, "The Roman Father's Power of Life and Death," in *Studies in Roman Law in Memory of A. Arthur Schiller*, ed. Roger S. Bagnall and William V. Harris (Leiden: E. J. Brill, 1986), 82.
[127] "Voluit enim ita demum hanc potestatem patri competere, si in ipsa turpitudine filiam de adulterio deprehendat." Ulpian, *Adulteries*, book 2, in Justinian, *Digest*, 48.5.24. See also the discussion in Saller, *Patriarchy*, 116.
[128] John Crook, "*Patria Potestas*," *The Classical Quarterly* 17, no. 1 (1967): 113.
[129] Lewis, "Slavery, Family, and Status," 157.

> whatsoever, is acquired for us; for he who is subject to our authority can have nothing of his own.[130]

The capacity for sons (less so daughters) to own private property does, however, improve over time. For instance, in a motion to encourage enlistment in the military, Augustus permitted sons to have complete rights over the property paid to them for military service or acquired as the spoils of war.[131] Constantine later extended this privilege to include goods acquired during civilian public service.[132] These exceptions notwithstanding, fathers generally held exclusive rights to their children's possessions. The *patria potestas* would endure until the *pater familias* died, after which his sons would acquire legal agency (*sui iuris*), the right to own property and *patria potestas* over their own children.[133] Alternatively, a *paterfamilias* may elect to emancipate his children if they have reached the age of maturity, or he may transfer a child to the authority of another family as in the case of marriage.[134]

Like the relationship between master and slave, a son could administer funds, make decisions and exercise authority vicariously on his father's behalf. Max Kaser has explained the relationship between a father and his dependents through the metaphor of the *Organschaft* (a confederacy of separate businesses acting as one), the essence of which is summarised by Zimmermann: "In the same way as a human being uses his limbs or as (today) a juristic person uses his organs to act, the Roman *paterfamilias* was able to act through his dependents."[135] Roman law prescribes various scenarios in which a father can 'loan' his authority to one of his dependents. One such example is the *actio quod iussu* ("action on order"), in which the

[130] "Igitur quod liberi nostri, quos in potestate habemus, item quod serui nostri mancipio accipiunt uel ex traditione nanciscuntur siue quid stipulentur uel ex aliqualibet causa adquirunt, id nobis adquiritur: ipse enim, qui in potestate nostra est, nihil suum habere potest." Gaius, *Institutiones*, 2.87. Translated in *Institutes of Gaius*, trans. Francis de Zulueta.
[131] "It is agreed that nothing is owed to fathers from the military property of their sons." Pomponius, *Rules from Marcellus' Notes*, in Justinian, *Digest*, 49.17.10.
[132] Paul J. du Plessis, *Borkowski's Textbook on Roman Law* (Oxford: Oxford University Press, 2010), 117.
[133] Suzanne Dixon, *The Roman Family* (Baltimore: John Hopkins University Press, 1992), 40.
[134] Ibid., 40.
[135] Max Kaser, "Zum Wesen der römisches Stellvertretung," in *Romanitas, Revista de cultara Romana*, vol. 9 (1970), 343. Cited in Zimmermann, *Law of Obligations*, 51.

dependent of a *paterfamilias* is granted the authority to render a legal agreement on the *paterfamilias'* behalf who will ultimately be culpable for fulfilling the obligation.[136] While Ulpian summarises that "a father or master is treated as giving authorization if he grants a power of agency," the precise nature of this authority and its concomitant agency could vary.[137] Often the dependent would be afforded considerable freedom and could play fast and loose with the authority conferred to him. To take an example from Ulpian, "a person who states publicly, 'do any business you like with my slave Stichus; it will be at my risk,' is taken to have authorized all kinds of transactions."[138] By the same token, a *paterfamilias* could give a dependent a very specific task to fulfil on his behalf ("Take X amount of gold to person Y and return with item Z") or he could give him a more general responsibility ("Tend to the family business during my absence"). In the latter case, the dependent is presumably free to exercise his judgement, make his own decisions and participate in negotiations provided he achieves the overarching task of keeping the business in the black. Noting that the common denominator of these arrangements was the authority given to a dependent to act on behalf of the *paterfamilias*, Rena van den Bergh argues that "it seems as if agency originated within the family circle."[139] Indeed, it would seem that, as long as the *paterfamilias* was alive, legal agency tricked down and was loaned out to dependents at the patriarch's discretion. Under such an arrangement, the nominated dependent becomes at once an instrument and an ambassador for the *paterfamilias*, temporarily wielding his authority, acting as his spokesperson and serving as the intermediary between the patriarch and third parties.

[136] Bruce W. Frier and Thomas A. J. McGinn, *A Casebook on Roman Family Law* (Oxford: Oxford University Press, 2004), 255. See also Justinian, *Digest*, 15.4.6.
[137] "Sed et si mandaverit pater dominusve, videtur iussisse." Ulpian, *Edict*, book 29, in Justinian, *Digest*, 15.4.1.3
[138] "Et ideo et si sic contestatus sit: 'quod voles cum sticho servo meo negotium gere periculo meo,' videtur ad omnia iussisse." Ulpian, *Edict*, book 29, in Justinian, *Digest*, 15.4.1.1.
[139] Rena van den Bergh, "He's one who minds the Boss's Business," *Fundamina* 21, no. 2 (2015): 367.

3.2 Lactantius' *Divine Institutes*: Context and Overview

The legal background set out above provides fertile soil for exploring the ways in which Christian writers engaged with the legalistic framework of the Roman *domus*. After all, the very notion of a patriarch with supreme authority over a closed social unit, who could dispense resources at his own discretion, and who, most significantly, could act through a designated subordinate who represented his authority, forms the very core of salvation history. Contemporaries too identified this common ground and made ample use of it in their writings. In the sections which follow, I will look at once such contemporary, the third-fourth-century theologian Lactantius (c. 250-325 CE), who used this comparison in his apologetic writings. I will begin by briefly sketching out the context of his main work, the *Divinae Institutiones* ("Divine Institutes"), before delving into the text itself and analyzing its engagement with the concept of the *paterfamilias*.

Lactantius' fame as an early Church Fathers pales in comparison to Tertullian and Augustine, but his writings nevertheless evince a high degree of theological sophistication. He seems to have spent his formative years in North Africa, where he studied rhetoric in Carthage under the tutelage of Arnobius of Sicca.[140] Following this, he taught rhetoric in Carthage and was later recruited by Diocletian to teach in Nicomedia, where the Emperor had established his new capital.[141] Consequently, he was a close witness to the Diocletian persecutions, remaining in Nicomedia for two years following Diocletian's condemnation of the Churches and his "disenfranchisement" of Christian communities in 303 CE.[142] This experience would have a palpable impact on Lactantius' works which acquired a decidedly apologetic profile, as exemplified in such titles as *De mortibus persecutionum* ("On the Death of the Persecutors") and *De Ira Dei* ("On the Wrath of God"). More generally, he stressed the need for *patientia*

[140] Elizabeth DePalma Digeser, "Lactantius," in *Great Christian Jurists*, 239-40.
[141] Ibid., 240.
[142] Ibid., 240.

("forbearance") by contending that proselytization to the Christian faith should be achieved through argumentation and persuasion as opposed to coercion from the arm of the state.[143]

Lactantius' theological position is also worth noting and keeping in mind as we read his sources. In 325, the Council of Nicaea condemned the Arian view, which maintained that Christ was subordinate and inferior to the Father, in favour of what would become the Nicene Creed, which asserted that Father and Son were equal and of one essence.[144] As a pre-Nicaean Christian, Lactantius was writing during a time when this debate was more nebulous, with greater room for divergent opinion. Indeed, Robert Wilken has suggested that, prior to Nicaea,

> most Christians vaguely thought of Jesus as God; yet they did not actually think of him in the same way as they thought of God the Father. They seldom addressed prayers to him, and thought of him somehow as second to God – divine, yes, but not fully God.[145]

Without getting into the minutiae of this debate, over which much ink has been spilt, it will suffice to say that Lactantius appears to espouse a tentative subordinationist doctrine and, as will be shown, this is encapsulated in his use of the *paterfamilias* and son image in the *Divine Institutes*.

The *Divine Institutes* is an apologetical and polemical treatise that at once defends the legitimacy of the Christian faith while exposing the falsity of pagan gods. The *Institutes* was produced between 303 and 313, during the apex of the Diocletian persecutions, and leading into the toleration policies of Galerius (Edict of Serdica, 311) and, later, Constantine (Edict of Milan, 313). The text was eventually dedicated to the Emperor Constantine whose moderate

[143] This is the primary focus of Book 5 of the *Divine Institutes* in which Lactantius rails against the intolerance of the pagans and their use of violence to enforce religious conformity. Digeser has argued, perhaps heavy-handedly, that this constituted "an original and comprehensive argument for religious toleration." See Elizabeth DePalma Digeser, "Lactantius, Porphyry, and the Debate Over Religious Toleration," *The Journal of Roman Studies* 88 (1998), 129.

[144] On the initial dispute between Arius and the bishop of Alexandria, see Lewis Ayres, *Nicaea and its Legacy: An Approach to Fourth-Century Trinitarian Theology* (Oxford: Oxford University Press, 2004), 15-16.

[145] Robert Wilken, *The Myth of Christian Beginnings* (London: S. C. M. Press, 1979), 179.

policies of toleration accorded with Lactantius' own views.[146] The event which galvanized Lactantius into producing the work seems to have been a series of lectures held in Nicomedia during the winter of 302-303. In his efforts to consolidate the Empire by bringing its citizens under a unified religion, Diocletian sought to use intellectual argument before coercion. Thus, he invited two prominent opponents to lecture against Christianity. One of the figures was Sossianus Hierocles, whose treatise on *The Lover of Truth* argued that Christ's claim to divine status hinges on his miracles. These miracles, he argues, pale in comparison to those performed by Apollonius of Tyana, a first-century philosopher who, unlike Christ, knew his place and did not regard himself as a god.[147] The second opponent, the Neoplatonist Porphyry of Tyre, took a more diplomatic approach, arguing from his *On Philosophy from Oracles* that Christ was a pious man (but *only* a man) who should not be worshipped, but whose guidance could help us reach the Supreme God through philosophical contemplation.[148]

With this context in mind, we may note that Lactantius' response in the form of the *Institutiones* fights the pagans on home turf. While contemporary pagans had argued that the political system should "reflect or reinforce certain metaphysical truths," Lactantius believed that Diocletian's system fell short due to its association with polytheism.[149] His solution was to propose a new political system grounded in divine law, yet he does so with relatively limited reference to Scripture, choosing instead to invoke the pagan philosophers and poets.[150] In doing so, he is speaking in the conceptual language of his enemy, using their own arguments and logic against them.

[146] It has been further argued that Lactantius' proximity to Constantine may have influenced the Emperor's toleration policies. Elizabeth DePalma Digeser, "Lactantius and Constantine's Letter to Arles: Dating the *Divine Institutes*," *Journal of Early Christian Studies* 2, no. 1 (1994): 33.
[147] Summarised in Elizabeth DePalma Digeser, *The Making of a Christian Empire: Lactantius and Rome* (Ithaca and London: Cornell University Press, 2000), 5.
[148] Ibid., 5-6.
[149] Digeser, "Lactantius," 244.
[150] Ibid., 244.

One particular 'dialect' of this language was, quite pertinently, the terms and concepts of Roman law. The law at this time was being used as an instrument of Christian oppression, and it is striking to observe the way in which Lactantius has appropriated and emulated its conventions for his own purposes. The very title of the *Divine Institutes* is borrowed from the term applied to Roman lawbooks (*institutiones*, "customs").[151] In choosing such a title, Lactantius tacitly places the work on an unassailable pedestal by, in a sense, piggybacking on the hegemony already inherent in Roman law. Indeed, in the first book, Lactantius spells out this parallel quite explicitly:

> And if certain [learned] people who are professional experts in fairness have published Institutes of Civil Law for the settlement of lawsuits and quarrels between citizens in dispute, then we shall be all the more right to publish the Institutes of God, in which we shall not be discussing gutters or water-theft or common affray, but hope and life, salvation and immortality, and God, for the eternal settlement of superstition and error, which are foul and lethal.[152]

In trivializing, even mocking, the pedestrian concerns of the temporal law and contrasting these with the sublime preoccupations of the divine law, Lactantius issues a qualitative judgement on the ultimately subordinate status of Roman law (i.e., temporal law). Nevertheless, as will be shown, Roman law, in addition to providing the general framework around which the *Divine Institutes* is based, also occupies an important position as an explicatory and rhetorical device throughout the work. The analogy of the *paterfamilias* and its parallel with the Trinity is representative of this legal rhetoric and will be discussed in the section which follows.

[151] William Phillips suggests this is the first occurrence of the term *Institutiones* being applied to a Christian text. See William Philips, "The Influence of Roman Law on the history and Doctrine of the Christian Church during the First Three Centuries" (PhD thesis, University of Edinburgh, 1931), 207.

[152] "Et si quidam prudentes, et arbitri aequitatis, Institutiones civilis juris compositas ediderunt, quibus civium dissidentium lites contentionesque sopirent: quanto melius nos et rectius divinas Institutiones litteris persequemur; in quibus non de stillicidiis, aut aquis arcendis, aut de manu conserenda, sed de spe, de vita, de salute, de immortalitate, de Deo loquemur, ut superstitiones mortiferas, erroresque turpissimos sopiamus." Lactantius, *Divinae Institutiones*, I.1.12 in *L. Caeli Firmiani Lactanti Opera Omnia, Corpus Scriptorum Ecclesiasticorum*, vol. 19, ed. S. Brandt and G. Laubmann (Prague/Vienna/Leipzig, 1890). Translation with minor corrections in Lactantius, *Divine Institutes* (Translated Texts for Historians, 40), trans. with Introduction by Anthony Bowen and Peter Garnsey, *Translated Texts for Historians* (Liverpool: Liverpool University Press, 2003), 1.1.12.

3.3 God and Christ as *Paterfamilias* and Son

In Book 4 of the *Institutes*, entitled "True Wisdom and Religion," Lactantius expounds the unity of God, arguing that this unity is evidence for the legitimacy of monotheism and the absurdity and unnaturalness of polytheism. This is followed by a lengthy discussion on the birth, mission and sacrifice of Christ, including an explanation of the way in which God and Christ can be at once unified and separate. Although not always explicitly invoked, the influence and parallels with the Roman *paterfamilias* can be observed at various points throughout the book. Further, the instances in which the comparison *is* explicit, I suggest, demonstrate that the analogy was present in Lactantius' mind and the mind of his readers even in the more subtle sections of the text.

In arguing for monotheism, Lactantius deploys an ingenious argument in which he invokes the singularity of the *paterfamilias*. We have previously established that a child remains under the *potestas* of their *paterfamilias* until they are emancipated or the *paterfamilias* dies. However, throughout this entire process, the *paterfamilias* remains a single figure. A son who is emancipated becomes his own *paterfamilias*. However, by this point, he forms his own *domus*, that is, his own social unit. Under no circumstances, however, can there be two *patresfamilias* within the same *domus*. On this reasoning, Lactantius writes:

> But if, procreation being a unique act, nature forbids one person to have many fathers, so it is unnatural and unholy to worship many gods. Worship must be given therefore to the one who alone can truly be named father; he is bound also to be lord because he has power to punish matching his power to indulge. He is to be called father because he makes us so many great gifts, and lord because he has the supreme power of reproof and punishment. Even the reasoning of civil law shows that a father must also be a master. Who will be able to bring up sons unless he has a master's power over them. A man is properly called 'father of the family,' [*paterfamilias*] provided he has sons; obviously, 'father' includes slaves too because 'of a family' follows, and 'family' includes sons

> because 'father' precedes. Hence it is clear that one and the same person is both father of his slaves and master of his sons.[153]

In the first instance, the reference to procreation draws a connection between the biological (or natural) and social relationship between man and God on the one hand, and father and son on the other. The logic in Roman law, put very generally, is that one who begets has dominion over the begotten, and this transfers over into the Christian context whereby mankind is begotten – created – by God and is thus subservient to him alone. Both the *Paterfamilias* and God are, to put it in grammatical terms, *singulare tantum* ("always singular"). Here, we might rightly recall Matthew's maxim quoted earlier in reference Tertullian's condemnation of Christians taking the Roman military oath: "No man can serve two masters… Ye cannot serve God and mammon."[154]

Equally noteworthy is the conflation of *paterfamilias* and *domus* ('Lord') in the identity of God and the Roman father. Indeed, as has been shown, the *paterfamilias* was *ipso facto* a lord since he held supreme authority over the children under his *potestas*, whose legal status and agency was comparable to that of slaves. What is peculiar is the way in which God's identity is somehow bifurcated into Lord and *paterfamilias*, with each facet representing a different component of the paternal role. The former is associated with his prerogative to punish, discipline and control, and this presumably stems from the fact that *dominus* was more readily applied in the context of a master-slave relationship (even if a father was, by definition, a *dominus*). The latter, by contrast, is associated with the issuing of rewards and privileges. The *paterfamilias* was, first and foremost, a *father* and with this came an expectation, enshrined in custom and evolutionary instinct, to protect and nourish his prodigy who constitute the vessels

[153] "Unus igitur colendus est, qui potest vere pater nominari. Idem etiam dominus sit necesse est; quia sicut potest indulgere, ita etiam coercere. Pater ideo appellandus est, quia nobis multa et magna largitur: dominus ideo, quia castigandi ac puniendi habet maximam potestatem. Dominum vero eumdem esse, qui sit pater, etiam juris civilis ratio demonstrat. Quis enim poterit filios educare, nisi habeat in eos domini potestatem? Nec immerito paterfamilias dicitur, licet tantum filios habeat: vindelicet nomen patris complectitur etiam servos, quia familias sequitur, et nomen familiae complectitur etiam filios, quia pater antecedit: unde apparet eumdem ipsum, et patrem esse servorum, et dominum filiorum." Lactantius, *Institutes*, 4.3.13-16

[154] Matt 6:24.

through which the family's legacy will be carried. More generally, these two aspects of the *paterfamilias* recall the *patria potestas* and all the rights therein, including the right to chastise children and the right to issue and revoke possessions (all of which ultimately belong to the patriarch). Although not explicitly mentioned, the *ius vitae necisque* is also lurking in the subtext since God obviously wields the power of life and death over mankind.

The remainder of Book 4 is concerned with explaining the nature of Christ's assignment on earth and his relationship with the Father. Here, the influence of the Roman *paterfamilias* and son is less overt but, considered in the context of the passage discussed above, is still being tacitly alluded to. In Lactantius' view there is a clear sense in which Christ is acting as a representative of God in a manner comparable to the way in which a *paterfamilias'* nominated dependent may act on his behalf. Lactantius writes that God, upon witnessing the decadence of the world,

> sent them his own son to turn them from the wicked and empty patterns of worship to knowing and worshipping the true God, and also to draw their minds away from folly to wisdom and from iniquity to works of justice.[155]

The Son is sent at the behest of the Father with a task to fulfil and a message to transmit. The Son is effectively given the right to speak on his Father's behalf, yet he is reserved in how he exercises this privilege and remains cognizant of his own position in the hierarchy:

> He taught that there is one God and that he alone is to be worshipped, and he never said that he was God himself: he would not have kept faith if after being sent to get rid of gods and to assert a single God he had introduced another one besides. That would not have been a proclamation of a single God, but conducting his own private business and separating himself from the one he had come to illuminate. Because he proved himself so faithful and because he took nothing at all for himself, in order to fulfil the instruction of the one who sent him, so he received the dignity of eternal priesthood, the honor of supreme kingship, the power to judge and the name of God.[156]

[155] "Filium suum legavit ad homines, ut eos converteret ab impiis et vanis cultibus, ad cognoscendum et colendum Deum verum: item ut eorum mentes a stultitia ad sapientiam, ab iniquitate ad justitiae opera traduceret." Lactantius, *Divine Institutes*, 4.14.17.

[156] "Docuit enim quod Deus unus sit, eumque solum coli oportere; nec umquam se ipse Deum dixit, quia non servasset fidem, si missus ut deos tolleret, et unum assereret, induceret alium, praeter unum. Hoc erat, non de uno

This passage may be regarded as a direct response to the arguments of Sossianus Hierocles at the lecture of 302/03 who charged Christ with the hubris of presuming himself a god in his own right. Equally, the passage suggests that Christ suppresses his own divinity, since part of his mission was to upend the pervasive polytheism; identifying himself as partially or wholly divine would only garble this message.[157] Moreover, there is a suggestion that identifying himself as divine would throw into doubt his subservience to his Father and would suggest that he is acting beyond the ambit of the authority his Father had bestowed on him by using this authority in "conducting his own private business." The language here is particularly compelling and is redolent of prescription in Roman law which allowed a dependent act as an *institor* ("business manager") of the *paterfamilias'* business with the usual provision that he is only doing so on the patriarch's behalf and for the patriarch's benefit.[158] Lactantius' subordinationist theology is on full display here, as Christ is clearly cast as an ontologically separate being who is observing directive of God, his superior. As a final point, the righteous and responsible wielding of the Father's authority serves to legitimize and augment the Son's status as his representative, bringing him closer to the Father in power and status. This too corresponds to the expectation that a son, when acting on the authority of his *paterfamilias*, should do so judiciously with the expectation that he will become a *paterfamilias* someday himself, just as Christ is reunified and conflated with God once his task is completed.

In explaining the ambiguous unity and separatism of God and Christ, Lactantius deploys one particular legal comparison which nicely illustrates the way in which two

Deo facere praeconium, nec ejus qui miserat, sed suum proprium negotium gerere, ac se ab eo quem illustraturus venerat, separare. Propterea quia tam fidelis extitit, quia sibi nihil prorsus assumpsit, ut mandata mittentis impleret, et sacerdotis perpetui dignitatem, et regis summi honorem, et judicis potestatem, et Dei nomen accepit." Lactantius, *Divine Institutes*, 4.14.18-20.

[157] For a further discussion on this passage, see Edgard G. Foster, "Metaphor and Paternity: The Concept of God's Fatherhood in the *Divinae Institutiones* of Lactantius" (PhD thesis, University of Glasgow, 2008), at 218-19.

[158] See Van Den Bergh, "He Minds the Boss's Business," 367.

ostensibly separate entities can be regarded as different instantiations of the same substance. Invoking the image of the father and son within the *domus*, he writes:

> When a man has a son whom he loves but the son lives in the house, under the hand of his father, father may grant son the name and power of master, but in civil law there is said to be only the one house and one master of it. So this world is god's one and only house, and father and son who occupy the world in total unanimity are one God: one is as two and two is as one.[159]

The passage recalls the earlier point about the singularity of God and the *paterfamilias*, but this time adds that the son can act as an extension or appendage of the Father. Imbued with the Father's substance and carrying his authority, the son acts on the Father's behalf, yet he never supplants or usurps the Father's position as the rightful head of the household. Under such an arrangement, an order from the Son must be observed as readily as an order from the Father, since it bears the Father's mandate. Ultimately, however, in the Christian context and in Roman law, there is only one head of the household. Hence the inexorable conclusion: "one is as two and two is as one."

In this final chapter, I have sought to show the way in which the legal framework of the Roman family influenced Christian theological writing. It was shown that the Roman conception of the *paterfamilias* and the concomitant *patria potestas* was avidly quarried by in search of grounds for comparison with the Christian faith. The maxim within Roman law that there can be only *one* head of the household was cleverly used by Lactantius as an argument against polytheism, since such a practice carries the absurd proposition that one can serve several masters. It was further shown that the relationship between the *paterfamilias* and his dependents was a helpful point of comparison for explaining the notoriously troubling question of Christ's relation to God. The chapter has built on the points developed in earlier chapters, such as the conception of *dominium* and *possessio* in chapter 2, which applied in equal measure

[159] "Cum quis habet filium, quem unice diligit; qui tamen sit in domo, et in manu patris, licet ei nomen domini potestatemque concedat, civili tamen jure et domus una, et unus dominus nominatur. Sic hic mundus una Dei domus est; et Filius ac Pater, qui unanimes incolunt mundum, Deus unus, quia et unus est tamquam duo, et duo tamquam unus." Lactantius, *Divine Institutes*, 4.29.7-8.

to the father-child and master-slave relationship. Most significantly, the chapter showed the way in which a Christian author writing during a time of persecution at the hands of the Roman Empire, built a treatise in defence of his faith using the very language and conceptual toolbox of his oppressors.

Conclusion

This thesis has set out the various ways in which the early Christian sources from the second to fifth century were influenced by the language and concepts of Roman private law, and how the Christian authors appropriated these concepts for their own rhetorical ends.

Roman private law was primarily concerned with setting out the codes of conduct dictating the ways in which individuals should interact, with defining the prerogatives of those in power and the curtailments of those under power, and with establishing the obligations each type of person had to their Emperor, their family and fellow citizens. Private law was one of the fundamental instruments through which hierarchies were defined and it was by virtue of these laws that a Roman citizen could orient themselves, know their place in the pecking order and the implications this held for their rights and duties. For these reasons and more, private law kept the cogs of Roman society turning. Contract law was the guarantor of a stable and reliable commerce system, and also enforced the pledges of loyalty between the citizens, the state and the Emperor. Property law accommodated the fluid exchange and use of material goods, both vertically (through inheritance) and horizontally (through trade and right of use). Family law protected the stability of the fundamental social unit of Roman society by defining the relationship between father and child, and ensuring there were customs in place which would allow fathers to regulate the conduct of their children while at the same time preparing those children for the responsibility of preserving the family line and taking on his duties.

The rhetorical potential of various private law concepts was ardently realized in Christian sources in which we observe a peculiarly judicial style of argumentation, redolent, perhaps, of the kind of formulae and discourse used by advocates in the law courts. Christianity was a religion of relationships, obligations and agreements and, thus, lent itself easily to comparison with Roman private law which valued the same institutions and normative

practices. All of these themes were on display in each of the three areas of private law discussed in this thesis. As a way of closing, I will recapitulate and take stock of what has been said on each of these areas and offer some final reflections.

The first chapter considered the likely influence of the Roman *stipulatio* on the Christian baptismal rite, and additionally looked at the reception and conceptualization of this similarity by the contemporary case study of Tertullian. It was demonstrated that the early baptismal formula shared too much in common with the *stipulatio* for the corresponding forms to be dismissed as coincidental and unrelated. Rather, early Christians evidently appreciated the crystal-clear clarity and incontestable hegemony inherent in the *stipulatio* and imported it into their own sphere. In importing the *stipulatio* formula, they also imported everything that came with it, including the associated idea that 'defaulting' on the contract would carry stiff consequences. The intended result, I suggest, was that baptisees were to treat their contract with God with the same or greater gravitas as they would treat a legal contract with a fellow citizen. Tertullian, recognising the similarities between the two contracts, made avid use of the *stipulatio* as a point of reference for developing his own arguments. In sum, he reasoned that if something applied in the context of a profane contract, it follows inexorably that it applied to the sacred contract which naturally carried even greater importance and higher stakes. Thus, using this logic, Tertullian argued against such practices as infant baptism on the basis that a catechumen must have 'legal' agency before making a contract with God. Similarly, it was observed that the Roman *sacramentum* – the military pledge made before the Emperor – was likewise a point of comparison for the baptismal rite. In his remarks to the Christian martyrs, Tertullian equates them to soldiers, making specific reference to the "words of the sacrament" and the "military service of the living God" to remind the martyrs that, as with the *sacramentum militare*, the baptismal contract is an indissoluble pledge of allegiance to the ruler for whom one should readily lay down his life.

The second chapter examined the notions of *possessio* and *dominium* as they appeared in the theological and exegetical treatises and letters of Augustine of Hippo. Here, too, the relationship between man and God was explored, but this time through the lens of the master-slave relationship and the concomitant rights and restrictions held by each constituent of this relationship. It was established that, in Roman law, ownership proper or *dominium* was a right reserved for exclusively for freemen while slaves could merely possess (that is, hold) *peculia* at their master's discretion and with the understanding that it ultimately belonged to him. Throughout his works, Augustine made avid use of this analogy in delineating his own views on the possession and use of worldly goods. Specifically, he uses the terms of *possessio* and *peculium* when addressing the complaints of the Donatists who, in his view, mistakenly believed they had ultimate right of ownership over their confiscated property. Noting that man is effectively a slave before God, Augustine reasons that we have no more claim over our property than a slave has over his (or rather, his master's property). He made a further distinction between divine and temporal law, arguing that the temporal ruler (the king or emperor) has a divinely-ordained right to distribute, redistribute and confiscate property among his subjects. Subservience to God, then, necessarily entails subservience to the temporal ruler, to whom God has given the 'right of use' regarding his (that is, God's) property. Although not spelled out explicitly by Augustine, I suggested that the temporal ruler may be compared to the position of a senior slave in a Roman household, who may own slaves of his own and to whom he may lend out his own *peculium*, introducing another layer of vicarious possession. Regardless, the point of the second chapter was showcase the way in which the conceptions of ownership in Roman law were used by Augustine to stress man's servile dependence upon God, the transience of material wealth and the fact that all of our fortunes are held by virtue of his clemency.

The third chapter built upon many of the ideas already set out in the second chapter, by examining Christian sources in light of Roman family law and, specifically, the relationship between children and the *paterfamilias*. As in the previous chapter, we looked at a profoundly asymmetrical power relationship which in fact evinced many of the earmarks of the master-slave relationship. The *paterfamilias* was shown to exercise the *patria potestas* over his children, an extensive power which granted him *dominium* over his children's property and required them to seek his permission before making legally consequential decisions. Lactantius was observed borrowing the concept of the *paterfamilias* when formulating his apologetic defence of the Christian faith in his *Divine Institutes*. Likening God to the *paterfamilias*, he argued than man cannot have multiple divine creators anymore than he can have multiple fathers, thus issuing a scathing rebuke against polytheistic religious practices. Even more sophisticated is his use of the *paterfamilias* in explaining the role of Christ. Just as the *paterfamilias* can act *through* his children by nominating a child to temporarily hold his power and act or speak on his behalf, so too did God confer his divine nature onto Christ, sending him to earth with instruction which the son willingly obeys. Here, I would suggest, the use of Roman private law is at its most sophisticated. The *paterfamilias* and God are always defined in the singular with respect to the purview of their authority (the *domus* and the universe respectfully). The son, in acting on behalf of the father, never threatens the supremacy or singular existence of the father but is instead regarded as being one with the father. He is begotten by the father, and comes after the father both temporally and hierarchically, but he is of the same essence and is regarded as an extension of the father's power.

On the whole, the thesis has shown that, regardless of the position of Christianity in the Roman Empire – whether it was being persecuted, tolerated or embraced (the period in question witnessed sporadic intervals of all three) – Christian authors were well acquainted with Roman law and seemed to harbour an appreciation for its internal logic and a respect for its status as

the instrument through which order was maintained. This appreciation is exemplified in their decision to use the language and ideas of Roman law as a vehicle for the transmission of their doctrine. We may note that in all of the instances mentioned, the authors seem to be showcasing a fundamental harmony between Roman jurisprudence and Christian doctrine, reassuring potentially sceptical or hesitant pagan readers that the foundational ideas on which Christianity is build are not so alien to Roman culture.

As a final point, I would like to briefly mention some of the things this thesis has *not* covered. I have looked at the way in which Christians used and were influenced by ideas found in Roman law, however, it pays us to remember that this influence was mutual and bidirectional. The legal sphere was being shaped by the increasingly dominant position of Christianity as is showcased in the formulation of Canon law codes which were written and consulted during the Church councils of the fourth century and onwards. Sources such as the Acts of the Council of Chalcedon read like law codes and were used as the precedent for issuing judgements on heretical beliefs, not unlike the way in which the opinions of jurists in the *Digest* of Justinian were used to help guide the decisions of judges. Furthermore, while this thesis has focused on the Latin West, the scene in the Greek-speaking East was equally compelling. In previous research, I have looked at the law school of Berytus (Beirut) during the fifth and sixth centuries where many prominent Christian figures such as Zacharias of Mytilene (c. 465 – 536) and Severus of Antioch (c. 460 – 538) studied law in tandem with practicing Christianity. Quite often, such figures abandoned their would-be legal careers altogether, choosing instead to dedicate their lives and professions to life. Caroline Humfress has aptly described this phenomenon as a "brain drain from one discipline into another," something she attributes to the common 'frame of mind' needed to excel in both jurisprudence and theology.[160]

[160] Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007), 149.

This is a challenging but rewarding area of research and there is a great deal more to be done by future students and scholars. As is so often the case, this thesis started with a much more ambitious scope which initially proposed to use a *histoire croisée* approach and examine the mutual influence and dialogue between Christianity and Roman law. In the end, I deemed it quite enough to limit myself to the Christian sphere and study what it incorporated from the legal sphere. However, the initial project is still, I think, a feasible undertaking and something which I hope will come to fruition in the near or distant future.

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