



Augustinian Arguments in Medieval Canon Law

From the 'ordo iustus amoris' to the 'ordinabiliter habitum'

Conference "Between Jurisprudence and Philosophy", Cracow

PROF. DR. ULRIKE MÜBIG

UNIVERSITY OF PASSAU

9TH MAI 2026

I.1 Using Philosophical Tools within the Augustinian Rhetorical Approach

- ▶ Augustine of Hippo: A Christian philosopher in late Antiquity
- ▶ Combines Philosophy & Theology (faith seeking understanding)
- ▶ Distinction between *fides* and *opinio* (*De utilitate credendi* 25; Letter 120.39) motivates the threefold differentiation of judicial knowledge within the legal category *iniusta ex animo* ‘

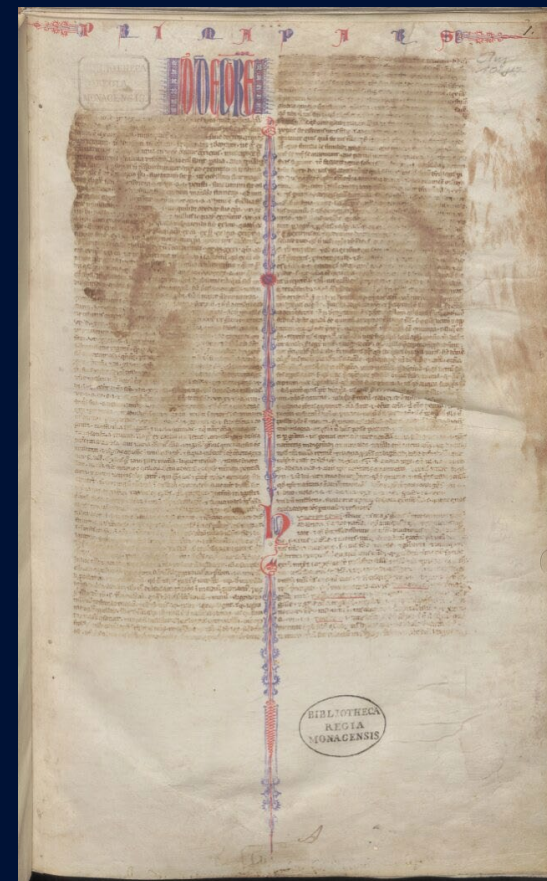


https://commons.wikimedia.org/wiki/File:Sandro_botticelli,_sant%27agostino_nello_studio,_1480_circa,_dall%27ex-coro_dei_fрати_umiliati,_01.jpg

I.1 The Understanding of Faith & the Augustinian Rhetorical Approach

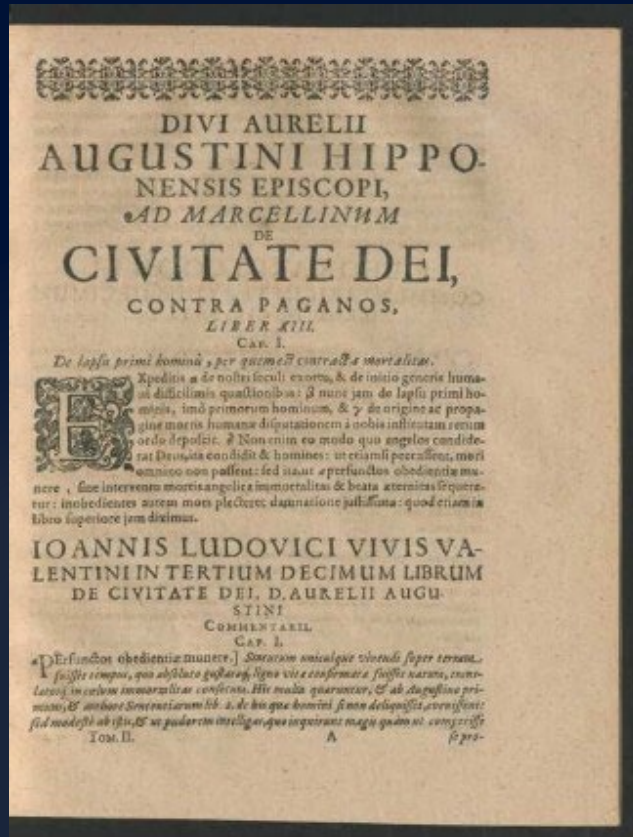
- ▶ *'An iudex debeat iudicare secundum conscientiam idest secundum quod alias nouit ueritatem, an contra conscientiam secundum allegata idest secundum quod sibi probatur contra ueritatem, quam alias nouit'*

Huguccio on the conflict between extrajudicial private knowledge (secundum conscientiam) and judicial knowledge (secundum allegata), Summa Decretorum, ad C. 3 q. 7 c. 4, Admont 7, fol. 182^{vb}



Huguccio, Summa decretorum, BSB Clm 10247, <https://www.digitale-sammlungen.de/view/bsb00134804?page=16%2C17>

I.2 Using Philosophical Tools within the Augustinian Rhetorical Approach

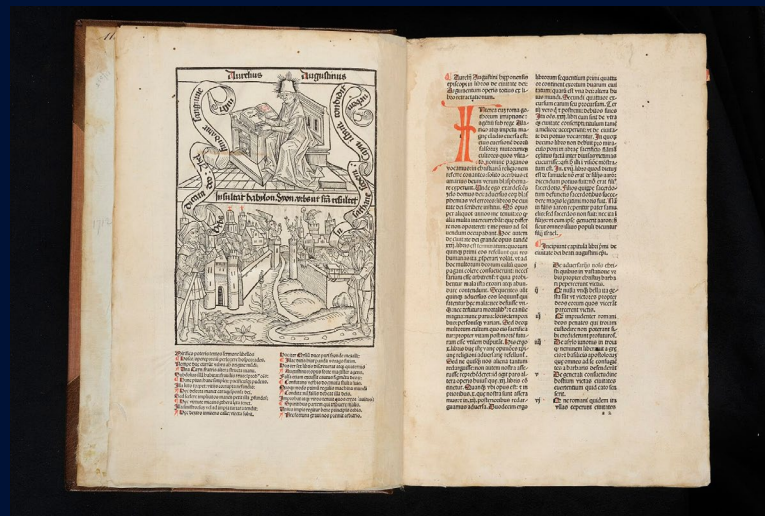


Divi Aurelii Augustini Hipponensis Episcopi, Ad Marcellinum
De Civitate Dei, Contra Paganos, Liber XIII,
[https://www.deutsche-digitale-
bibliothek.de/item/7DVVVR73TAGGUKG2VM67AQXST6NTL474](https://www.deutsche-digitale-bibliothek.de/item/7DVVVR73TAGGUKG2VM67AQXST6NTL474)

- ▶ Augustinian ‘Nominalism’ in Favour of Salvific Individualism:
 - God does not love man as such but individuals
 - ▶ Justice being an indeterminable ideal
 - ▶ Virtue as ‘the right order of love’ (De civitate Dei XV, 22)
- ▶ Redefinition of virtue as ‘ordo amoris’ by abstracting virtue from happiness

I.3 The Relationality of Justice in the Light of Legal Conclusions from the Augustinian Explanations of Trinity

- ▶ Justice being a grace-defined relationship between humans and God (De civ. Dei II, 21)
- ▶ 'Ordo amoris' connects individual action to divine cosmic order, forming the foundation of medieval canon law (e.g. 'iustitia ex animo')
- ▶ Augustinian Trinity (tres personae, una substantia) rejects Aristotelian substance metaphysics, framing Justice as relational



By [Augustine of Hippo](https://commons.wikimedia.org/wiki/Augustine_of_Hippo) - Self-scanned, Public Domain, [Link](https://commons.wikimedia.org/w/index.php?curid=50271725)

I.3 ctd. Justice's Relationality in the Light of Legal Conclusions from the Augustinian Explanations of Trinity

- ▶ Impossibility of definitive earthly justice (*remota iustitia*, II.); innate human desire for a relationship with the creator God (*ordo amoris*, supra I 2)
- ▶ Justice instituted in Explanations of Trinity supports salvation individualism and fair trials requirements (*ordinabiliter habitum*)
- ▶ Augustine's epistemological concept of 'ordo amoris' frames Medieval Canon Law categories such as 'iniusta ex animo'



https://commons.wikimedia.org/wiki/File:Augustine,_De_Civitate_Dei_-_New_York_Public_Library,_Spencer_Collection_MS_30,_1470,_Opening_of_text,_with_historiated_initial.jpg

II. (Necessary) Injustice in Bands of Pirates (*civitates terrenae*)

- ▶ ‘*civitates terrenae*’ – inherently unjust?:

‘What are empires, if they lack justice, if not large bands of pirates? Bands of pirates are nothing more than small kingdoms, for in them too, a crowd of men place themselves under the command of a leader, unite by agreement in a community, and share the spoils according to a firm agreement.’

A captured pirate responds to Alexander the Great: ‘And what possesses you to endanger the land? Of course, because I do it with a small vessel, I am called a pirate; you do it with a large fleet, and you are called an emperor.’ (De civitate Dei 4,4).

- ▶ ‘*Civitatum remota Justitia*’ is grammatical ambiguous
- ▶ Preferably causal interpretation since Augustine’s state thinking is based on utility instead of justice



https://www.europeana.eu/de/item/9200122/BibliographicResource_1000056124040, The captured pirate Dyonides before Alexander the Great von Maître François - KB, National Library of the Netherlands, Netherlands.

II. (Necessary) Injustice in Bands of Pirates (*civitates terrenae*)

- ▶ *Civitas terrena*: defined by its usefulness, irrespective of moral or justice
- ▶ *Civitas Dei*: characterised as a spiritual community
- ▶ Humans belong to both realms, which provokes Augustinian conclusions on the substantiality of the human spirit



Philippe de Champaigne, Augustin, https://snl.no/Augustin_av_Hippo

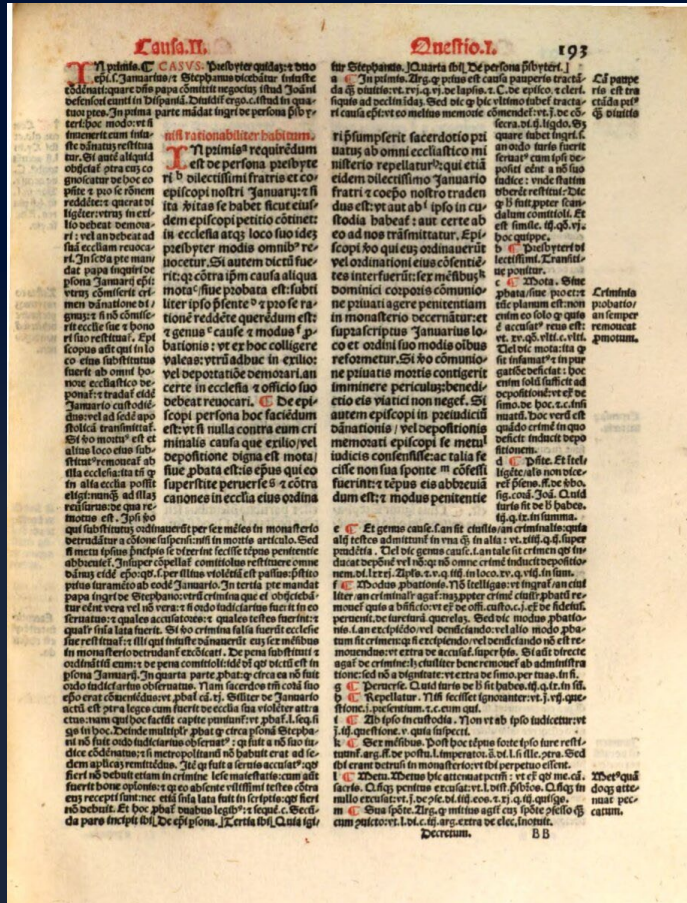
II. (Necessary) Injustice in Bands of Pirates (*civitates terrenae*)

- ▶ The substantiality of the human spirit (& the three intellectual elements: memory/knowledge/love of himself) is linked to the image of the Nicene Triune God (De Trinitate, 14, 19)
- ▶ The spirit's substance is of immaterial essence & defined by self-awareness (*se nosse*) and intellectual self-reflection (*se cogitare*), (De Trinitate 10, 16)
- ▶ By linking metaphysics and ethics the Augustinian reflections of the Trinity explain the mind to be directed towards knowing and loving God, fulfilling its created purpose



https://commons.wikimedia.org/wiki/File:Vittore_carpaccio,_visione_di_sant%27agostino_01.jpg

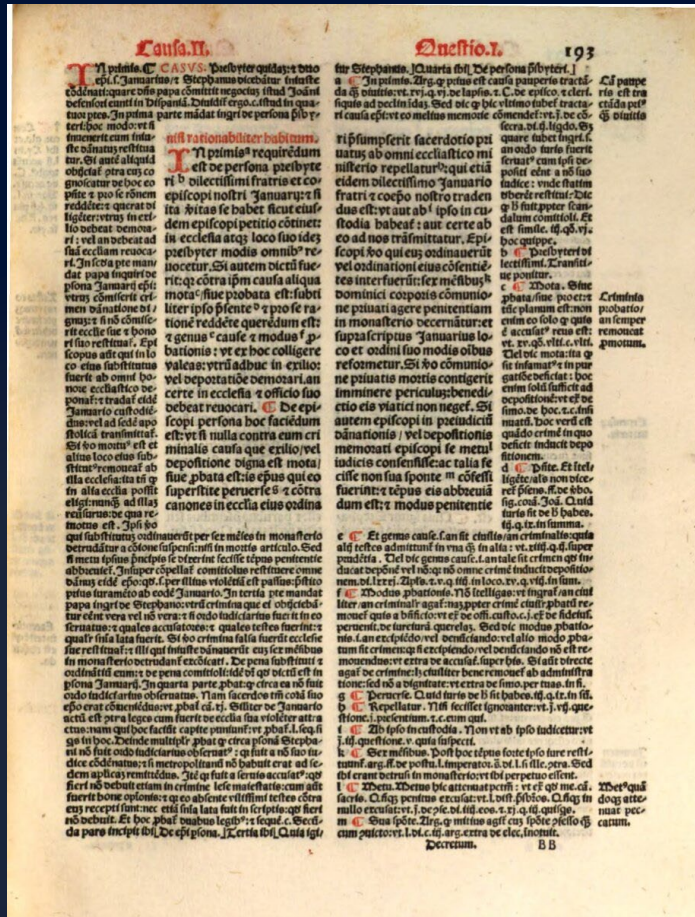
III. The ordinabiliter habitum of Medieval Canon Law (C. 2 q.1 c.7 Decretum Gratiani)



- ▶ Gratian's Decree adopted procedural rules from Augustine's sermon 351 De penitentia and from Pope Gregory I's letter in regard to an arbitrary dismissal
- ▶ Complementarity of procedural justice (*iustitia ex ordine*) and substantive justice (*iustitia ex animo*)
- ▶ Formal Justice by accordance to procedural rules (ordo iudiciarius) → otherwise 'sententia ex ordine iniusta'
- ▶ Material Justice (animo) requires alignment decision exclusively secundum legem → otherwise 'sententia ex causa iniusta'

Decretum Gratiani cum Glossis Joh. Teutonicus, Venetia 1525, p. 193, BSB 4 J.can.f. 96-1, <https://www.digitale-sammlungen.de/de/view/bsb10162216?q=%28decretum+gratiani%29&page=648,649>

III. The *ordinabiliter habitum* of Medieval Canon Law (C. 2 q.1 c.7 Decretum Gratiani)



Augustinian Will & Legal Accountability:

'malum est privatum boni'

- ▶ Salvific individualism binds Judges to conscience before God, rejecting arbitrariness
- ▶ God's Justice is mirrored in the 'ordo iudiciarius'
- ▶ 'Virtus est ordo amoris' (Augustinus, De civitate Dei XV, 22)

Decretum Gratiani cum Glossis Joh. Teutonicis, Venetia 1525, p. 193, BSB 4 J.can.f. 96-1, <https://www.digitale-sammlungen.de/de/view/bsb10162216?qt=%28decretum%28gratiani%29&page=648,649>

III. The *ordinabiliter habitum* of Medieval Canon Law (C. 2 q.1 c.7 Decretum Gratiani)

- ▶ Nullity of a judgment tainted by a procedural defect (*sententia ex ordine iniusta*)
- ▶ Gratian's decree C.2 q.1 c.7: 'nullum reseruetur iudicium, nisi rationabiliter habitum'
- ▶ Rooted in Augustinian's theory of the free will: Judges' external verdicts (*forum externum*) must reflect internal moral truth (*forum internum*)



https://commons.wikimedia.org/wiki/File:Frankfurt_Am_Main-Gerechtigkeitsbrunnen-Detail-Justitia_von_Westen-20110408.jpg

III. The *ordinabiliter habitum* of Medieval Canon Law (C. 2 q.1 c.7 Decretum Gratiani)

- ▶ Judges require both 'scientia' and 'potestas'
- ▶ Complementarity of procedural justice (*iustitia ex ordine*) and substantive justice (*iustitia ex animo*) reflects Augustinian foundations:
 - ▶ Human will & Divine grace: Judges' fairness reflects the imago Dei-likeness of human beings
 - ▶ Free will vs. original sin: Grace restores moral capacity, ensuring procedural fairness. Therefore, procedural justice isn't mere formalism



https://commons.wikimedia.org/wiki/File:Frankfurt_Am_Main-Gerechtigkeitsbrunnen-Detail-Justitia_von_Westen-20110408.jpg

IV. The Impact of the Rationalisation of Faith on Legal Thinking

- ▶ Procedural justice = divine order → Violations nullify judgments ('sententia ex ordine iniusta', C.2 q.1 c.7)
- ▶ Trinitarian legal logic (Judicial knowledge divided into 'secundum legem', 'conscientiam', 'confessional truth')
- ▶ 'Ordinabiliter habitum' based on Augustine's trinity-epistemology via procedural rationality
- ▶ Paulinian grace + Augustinian will/love synergy enable later Judgement Day narratives
- ▶ Augustine's Platonic-Christian fusion lays groundwork for Aquinas' Aristotelian-Christian synthesis



https://commons.wikimedia.org/wiki/File:The_Holy_Trinity_Cretan_School.jpg?uselang=de#Lizenz

IV. The Impact of the Rationalisation of Faith on Legal Thinking



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- ▶ The function of justice of *the ordo iudiciarius* enshrined in C.2 q.1 c.7 leads to the nullity of a judgment tainted by a procedural defect. Justice, as defined in regular canonical procedure (*ordinabiliter habitum*), itself escapes God's control (expulsion from paradise in Étienne de Tournai or in the *Rhetorica Ecclesiastica*).
- ▶ The decision-making criteria of the learned judge (*iurisperitus*) are also derived from theological and epistemological reflection on the Trinity; for the comprehensive faith according to Augustine, the Trinity is not only the foundation of the division of judicial knowledge into three parts: that which is exploitable in the context of the trial according to the law (*secundum legem*), that which falls within the scope of private knowledge outside the trial (*conscientia*), whether private or as a confessor (*ut deus*).
- ▶ Augustinian theological and epistemological reflection on the Trinity is rather at the basis of the rationalisation of medieval ecclesiastical procedural law and thus of the European conviction that justice can be imposed through rationality (*ordinabiliter habitum*).