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## Judicial authority

### Commentary on the gospel of John, 33

419/421

On the gospel passage from: *When they heard his discourse some of the crowd (Jn 7.40) to Neither will I condemn you; go and do not sin any more (Jn 8.11).*<sup>1</sup>

(1) You will remember, my beloved friends, that when I was given the opportunity to preach by the gospel reading yesterday, I spoke to you about the Holy Spirit. The Lord invited those who believed in him to drink of the Spirit; he was addressing men who thought that they had him in their grasp, and were eager to kill him. They were not strong enough, because he himself was unwilling. While he spoke to them in this way, the crowd began to grow restless on his account: some thought that he was the Christ himself, others denied that the Christ was going to rise out of Galilee. The men who were sent to arrest him returned innocent of the crime, and filled with wonder. They also bore witness that his teaching was divine: when the men who had sent them in the first place asked, *'Why have you not brought him back?'*, they replied that they'd never heard a human being speak like that: *'Because no human being speaks in this way.'*

But he spoke in this way because he was both God and man. The Pharisees,<sup>2</sup> though, rejected their witness, and asked them, *'Surely you have not been led astray also?'* We can see how much you have enjoyed his speeches. *Have any of our rulers believed in him, or any of the Pharisees? But this crowd, who do not know the Law, are accursed.'*

Those who didn't know the Law believed in the very person who had sent the Law; and the one who had sent the Law was condemned by those who were teaching the Law. In this way the Lord's own words were fulfilled: *'I came so that those who do not see might see, and the seeing might become blind'* [Jn 9.39]. The teachers, the Pharisees, indeed have become blind; while the people who did not know the Law, but believed in the author of the Law, have been enlightened.

(2) Nicodemus, however, was one of the Pharisees, who had come to the Lord by night [Jn 3.2]; he was not an unbeliever, but he was afraid.<sup>3</sup> He had come by night to the Light, because he wanted to be enlightened, but he was afraid of being recognised. He replied to the Jews, 'Surely our Law does not judge a person before it has given him a hearing and knows what he is doing?'

In their perversity they wanted to condemn him before they had studied his case.<sup>4</sup> Nicodemus was well aware, or at least he believed, that if only they would be willing to listen to him patiently, they themselves might become like the men they'd sent to arrest him, who had chosen to believe. *They replied to him* just as they had to them, because they were prejudiced in their hearts, 'Surely you are not a Galilean as well?'

That is to say, they were implying that he'd been led astray by the Galilean. The Lord was known as a Galilean because his parents were from the town of Nazareth. I said 'parents' with reference to Mary, not to the male seed.<sup>5</sup> He only needed a mother on earth, as he already had a Father above. In fact, his double birth was a double marvel: his divine birth didn't have a mother, his human birth didn't have a father. Well, then, what did those so-called teachers of the Law say to Nicodemus? 'Examine the Scriptures, and realise that no prophet rises from Galilee!'

However, the Lord of the prophets has risen from there. *They returned*, the Evangelist says, *each to his own home*.

(3) *Then Jesus proceeded to the mountain*. The mountain, moreover, was the Mount of Olives, a mountain rich in fruit, a mountain rich in ointments, a mountain rich in oil for chrism. Where was more fitting for Christ to teach them than the Mount of Olives? For the name Christ comes from the word 'chrism'; in Greek it's called *chrisma*, and in Latin *unctio* [anointing]. He anointed us precisely by making us wrestle against the Devil.

*And at daybreak he went again into the temple and all the people came to him, and he sat down and taught them*. But they were not able to arrest him, because he didn't think it appropriate yet for him to suffer.

(4) Pay attention now to the part where the Lord's gentleness was put to the test by his enemies. *However, the Scribes and Pharisees brought to him a woman who had been caught in adultery, and put her in the middle. They said to him, 'Teacher, this woman has just been caught in adultery. Moses has instructed us in the Law to stone culprits of this sort. What would you say about this?'*

*They said this to test him, so that they might be able to bring a charge against him*. To bring a charge on what grounds? Surely they hadn't

caught him in some criminal act! Or were they implying that the woman had some connection with him? What is meant by the words *in order to put him to the test, so that they might be able to bring a charge against him*? My brothers, we should realise that the Lord's marvellous gentleness is quite outstanding. They had noticed that he was exceedingly mild, exceedingly gentle. Indeed, an earlier prophecy had referred to him: *Gird your sword around your thigh, O mighty one. Press on in your splendour and beauty, march forward in prosperity, and reign, for the sake of truth, and gentleness, and justice* [Ps 45(44).3-4].

He brought the truth, then, as a teacher, gentleness as a liberator, justice as a judge.<sup>6</sup> That's why the prophet foretold that he would reign in the Holy Spirit.<sup>7</sup> When he spoke, his truth won recognition; when he wasn't roused against his enemies, his gentleness won praise. His enemies, then, were tormented by spite and hatred because of these two, his truth and his gentleness, and they put a stumbling-block in the path of the third, his justice.

Why? Because the Law had ordained that adulterers should be stoned;<sup>8</sup> and it was absolutely impossible for the Law to ordain something that was unjust.<sup>9</sup> If someone proposed an alternative to what the Law commanded, he would be convicted of injustice.

And so they spoke among themselves: 'He's thought to be truthful; he seems to be gentle; we must look for a way of slandering his justice. Let's present him with a woman caught in adultery; let's tell him what the Law instructs in cases like hers. Then, if he orders her to be stoned, he'll be lacking in mercy; but if he decrees that she should be released he'll lose hold of his justice.' 'However', they reasoned, 'he will undoubtedly say that we ought to release her, so that he does not destroy his gentleness, which has already won him the affection of the people. Here we have our opportunity to bring a charge against him and convict him of colluding against the Law.'<sup>10</sup> We can say to him, "You are an enemy of the Law. Your reply contradicts Moses – or rather contradicts God, who gave the Law to Moses. You are guilty of a capital offence; you must be stoned along with her."

Words and judgements of this sort would be capable of inflaming hatred, fanning accusations, and stirring up demands for condemnation. But against whom? Crookedness against uprightness, falsehood against truth, a corrupt heart against an upright one, folly against wisdom. Would they, though, even manage to prepare a noose without putting their own heads in it first? For look! – the Lord will both preserve justice

in his reply and avoid abandoning gentleness. The trap was set for him and he wasn't caught; but they set the trap, and they were caught. This was because they failed to believe in him, even though he was capable of extracting them from the noose.

(5) What then did the Lord Jesus reply? What did Truth reply? What did Wisdom reply? What did Justice reply, the precise target of their false accusations? He didn't say, 'She should not be stoned.' So he avoided appearing to contradict the Law. Did he say: 'She should be stoned'? Perish the thought! He did not come to destroy what he had found, but to seek what had been lost [cf. Lk 19.10]. So what was his reply? Look how full of justice it was, how full of gentleness and truth! *'If any of you is without sin'*, he said, *'Let him be the first to cast a stone at her.'*

What wisdom in that answer! How did it open the door for them into themselves? They were engaging in false accusations out of doors, so to speak, but they failed to examine their own indoors. They saw an adulteress, they didn't notice themselves. It was as colluders against the Law<sup>11</sup> that they were eager to fulfil the Law; and to fulfil it by false accusation, rather than genuinely, by condemning adultery through chastity. You have heard him, Jews! You have heard him, Pharisees! Teachers of the Law, you have heard the guardian of the Law; but you haven't yet recognised him as maker of the Law. What else did you think it meant when he wrote on the ground with his finger? The Law was written by the finger of God, but it was written on stone because they were hard [cf. Exod 31.18]. And now the Lord was writing on the earth, because he was looking for fruit.

You have heard it then, 'Let the Law be fulfilled, let the adulteress be stoned.' But surely the Law shouldn't be fulfilled in having her punished, by men who deserve punishment themselves? Each one of you should reflect upon yourself, should enter within yourself, should mount the tribunal of your own mind, should arraign yourself before your own conscience, and should force yourself to confess. You know who you are; *for no man knows what belongs to him, except the spirit of the man which is within him* [1 Cor 2.11]. Each one of us discovers that he's a sinner when he attends to himself. It is clear, then: either release the woman, or else accept the penalty of the Law along with her.

If Jesus were to say, 'The adulteress shouldn't be stoned', then he would be convicted of injustice. If he were to say, 'She should be stoned', he'd seem to be lacking in gentleness. Let him say what he ought to say, as someone both gentle and just. *'If any of you is without sin'*, he said, *'Let him be the first to cast a stone at her.'*

This is Justice speaking: the sinful woman should be punished, but not by sinners.<sup>12</sup> The Law should be fulfilled, but not by those who violate the Law. This is certainly Justice speaking: and the others were hit by his justice as if it were a wooden club; they looked within themselves, and they discovered their own guilt; and *one by one they all left*. The two of them were left, pity and the pitiable. After the Lord had struck them with the weapon of justice, he didn't choose to focus on them while they were falling, but he turned his gaze away from them, and *once again wrote with his finger on the ground*.

(6) Then, when the woman was left there alone and they'd all gone, he lifted up his eyes to her. We have heard the voice of Justice; let's also hear the voice of Gentleness. It seems to me that the woman would have been more terrified still when she heard the Lord's words: *'If any of you is without sin, let him be the first to cast a stone at her.'*

The men, then, turned their attention to themselves, and confessed their guilt simply by departing; and they left the woman with her own grave sin to him, who was without sin.<sup>13</sup> Because she had heard his words, *'If any of you is without sin, let him be the first to cast a stone at her'*, she expected to be punished by him, *in whom no sin* could be found [cf. 1 Jn 3.5]. However, having rebuffed her opponents with the voice of justice, he lifted to her a look of gentleness and asked her, *'Has no one condemned you?'*

She replied, *'No one, Lord.'*

He then said, *'Neither will I condemn you.'* Perhaps you were afraid of being condemned by me because you have found no sin in me. *Neither will I condemn you.'*

Why is this, Lord? Are you on the side of sinners, then? Surely not. Notice what comes next: *'Go, and do not sin any more.'* The Lord did, therefore, voice condemnation, but of the sin, not of the person.<sup>14</sup> For if he were in favour of sins, he would say, 'Neither will I condemn you; go and live as you want to. You can count on my setting you free. However much you sin, I'll free you from all punishments, even from Gehenna, and from the torments of hell.' But he did not say that.

(7) Those who love the gentleness of the Lord should take note, therefore, and also fear his truth. For *you are kind and upright, Lord* [Ps 25(24).8]. You love him because he is kind; fear him because he is upright. In his gentleness he said, *'I have kept silent'*; but in his justice he asks, *'Shall I keep silent for ever?'* [Is 42.14, LXX]. *The Lord is merciful and has pity.* That is clear; but add to it *patient*. And then add, *and very merciful*.

However, you should fear what comes at the end: *and truthful* [Ps 86(85).15]. Those he's supporting at present, despite their sins, he'll be judging eventually, because of their scorn.

*Are you scorning the riches of his patience and gentleness, in ignorance of the fact that God's forbearance is leading you to repentance? Through your hardness of heart and your impenitent heart, however, you are storing up wrath for yourself on the day of wrath, and of the revelation of the just judgement of God. For he will render to each person according to his works* [Rom 2.4–6].

The Lord is gentle, the Lord is patient, the Lord is merciful. However, the Lord is also just and he is truthful. He generously allows you room to reform yourself. You, however, are fonder of postponement than of improvement. You were wicked yesterday, were you? Then be good today. You've spent today indulging your spite, have you? Well, why not change for tomorrow? You're always waiting hopefully for something, and you've been promised so much by God's mercy. It's as if he has not only promised to pardon you if you repent, but has also promised you a longer life! How do you know what tomorrow will bring?

In your own heart you speak correctly: 'When I have reformed myself, God will disregard all my sins.' We can't deny that God has promised pardon to those who reform and convert. You can indeed read to me the passage from a prophet where God promised pardon to anyone who has reformed; but you can't read to me any passage from the same prophet<sup>15</sup> where God promises you a long life.

(8) We are in danger, therefore, from either side, from hope and from despair, contradictory things, contradictory emotions. Who is it that's deceived through hoping? The person who says, 'God is good, God is merciful, I will do whatever I like, whatever pleases me. Let me relax the reins of my passions and satisfy the longings of my soul. And why? Because God is merciful, God is good, God is gentle.' That is the sort who are in danger from hope.

On the other hand, people are in danger from despair when they fall into serious sins and think that they can't now be pardoned even if they repent. Then they decide that they're destined without doubt for condemnation, and say to themselves, 'As we're already condemned, why not do whatever we want?' They say this in the spirit of gladiators condemned to the sword. That's why desperate men are troublesome: they no longer have anything to fear, so they need to be strenuously feared themselves.

The one lot are killed by despair, the other by hope. The spirit vacillates between hope and despair. You need to be afraid of being killed by hope, in case by harbouring too great a hope of mercy you come under judgement. You need to be afraid on the other hand of being killed by despair, in case by thinking that it's too late for you to be pardoned for your serious offences, you fail to repent, and encounter the judge, Wisdom, who says, *'And I shall mock your affliction'* [Prov 1.26].

What does the Lord do, then, with those who are at risk from these two types of illness? This is what he says to those who are at risk from hope: *'Do not be slow to turn to the Lord, and do not delay from day to day. For his anger will arrive suddenly, and he will destroy you in the time of retribution'* [Ecclus 5.7].

What does he say to those who are at risk from despair? Every day that *the wicked man turns back, I will forget all his transgressions* [Ezek 18.21–2].

For the sake of those at risk from despair, he offers the haven of forgiveness; for the sake of those at risk from hope, who are cheating themselves by delaying, he makes the date of one's death uncertain. You do not know when your last day will arrive. Are you ungrateful because today you've been given the means to reform yourself?

This is the sense, then, in which he said to that woman, *'Neither will I condemn you.'* I have stopped you worrying about the past; beware of what's in the future. *Neither will I condemn you.* I have blotted out your offences; attend to my commands, so that you will come to find what I have promised you.

## Sermon 302

### On the feast of St Laurence

(1) Today is the feast-day of the blessed martyr Laurence.<sup>1</sup> The readings we have heard from holy scripture<sup>2</sup> were appropriate to this celebration. We heard them and we sang them, and we have listened attentively to the gospel reading.<sup>3</sup> Now we must follow in the footsteps of the martyrs by imitating them; otherwise our celebration of their feast-days is meaningless. Everyone knows the merits of the martyr we are commemorating. Has anyone prayed to him, and not had the prayer answered? Think of all the sick who have been granted temporary gifts through his merits – gifts

## Letter 154

- 1 Possidius, *Vita Augustini* 20, reports that A. had written Macedonius a letter intervening on behalf of someone seeking a favour, probably judicial clemency.
- 2 Macedonius refers to the first three books of *civ.*, completed in 413. He had earlier complained that he had not yet received the promised books (cf. Letter 152.3, pp. 70–1).
- 3 The sacking of Rome by Alaric in August 410.
- 4 Macedonius anticipates the end of his appointment as vicar of Africa in 414.

## Letter 155

- 1 *res publica*. Cf. Translator's note on Commonwealth.
- 2 Notorious tyrant of Acragas in Sicily during the sixth century BC who ordered a brazen bull constructed in which his opponents were roasted to death. Cf. Cicero, *Tusculanae disputationes* 5.26.75.
- 3 Cf. *civ.* 1.17–28.
- 4 5.38.110–11; 5.40.117.
- 5 *summum bonum*. Cf. p. 268 n. 9.
- 6 *Tusculanae disputationes* 1.31.75.
- 7 Terence, *Phormio* 318.
- 8 *virtus*, meaning strength or courage. In Roman thought, this was the defining characteristic of the male, *vir*. Cf. Cicero, *Tusculanae disputationes* 2.18.43.
- 9 *res publica*. Cf. Translator's note on Commonwealth.
- 10 A.'s argument depends on his version of the following section of text, which (like the Vulgate and Septuagint) mistranslates the Hebrew. In the original, the next section is a prayer for the well-being of the Psalmist's community.
- 11 A. makes a triple distinction: most people trust in material goods; the best philosophers trust in human virtue; the Christian trusts only in God.
- 12 Cf. *civ.* 2.21.2, citing Cicero, *De re publica* 1.25.39, a discussion which A. completes at *civ.* 19.21–7.
- 13 *prudentia*.
- 14 The four virtues, which Ambrose was the first to call 'cardinal virtues' (cf. *Expositio evangelii secundum Lucam* 5.49.62). Though traditionally held throughout Roman culture, their elaboration here is derived largely from Stoic ethics. Cf. Cicero, *De inventione* 2.159–67. At *civ.* 5.20, A. suggests ways that the pursuit of human glory corrupts these virtues in rulers.
- 15 Cf. Sallust, *Bellum Catilinae* 6.

- 16 Cf. Letter 154.1, p. 88.
- 17 *finis boni*, 'the end of good'. Cicero wrote a book on the ethics of the Hellenistic philosophical schools entitled 'on the ends of goods and evils'. The basic question at issue was: what is the supreme good? A. gives the Christian answer here.
- 18 Terence, *Heautontimoroumenos* 75–7.
- 19 A. here objects to the commonplace Roman attitude toward reason (*ratio*), largely based in Stoic and Peripatetic psychology and ethics, both of which exalt the role of this mental faculty in eliminating altogether or at least in dominating all levels of fear. Stoic writers, in general, held that the mere possession of virtue by a civic hero guaranteed blessedness, even in the face of horrendous tortures and death. Cf., for example, Cicero, *Paradoxa Stoicorum* 16–19; *Tusculanae disputationes* 5.5.14. A. counters that, in time of trial, divine grace alone, and not virtue, ensures blessedness in the hope of an eternal reward. It is this grace, and not innate valour, which endows the human being with true piety, the subject of § 17. Cf. also *civ.* 5.20; 9.4–5; 14.9; 19.4.
- 20 Cf. Translator's note on Piety.
- 21 A reference to the *cingulum*, a waist band or belt, originally worn by all soldiers. In Roman late antiquity it was worn by judges as well as by many civil imperial officials as a symbol of their office and of its austere responsibilities.
- 22 *res publica*. Cf. Translator's note on Commonwealth.

## Judicial authority

## Commentary on the gospel of John, 33

- 1 Most biblical scholars hold that Jn 7.53–8.11, which includes the passage concerning the woman caught in adultery, is a non-Johannine interpolation to this gospel. Although it was found in Old Latin and Vulgate editions of John, it is not found either in the oldest or best Greek codices. A. was aware of textual questions surrounding the passage (cf. especially *adult. coniug.* 2.7.6), but believed that it was both authentically Johannine and canonical.
- 2 Literally, 'separated ones', they constituted a sect or party within Judaism at time of the writing of the New Testament. The Pharisees are portrayed in the gospels as fostering strict observance of the Law.
- 3 Nicodemus, a Jewish priest and member of the Pharisees (Jn 3.1) and of the Sanhedrin, the latter being the supreme Jewish religious council and court for Jews living (at the time of Christ) in Judaea. He visited Jesus secretly at night to talk with him about his mission and teachings. Before

the Sanhedrin, he defended Jesus' right to a fair hearing (Jn 7.50). He aided with the burial of Jesus (Jn 19.39).

- 4 In saying this, A. wishes to establish a legal basis in Roman as well as in the Mosaic law for charging them with calumny and collusion (cf. below, § 4). Cf. Deut 1.16 (LXX): 'And I charged your judges at that time, saying, Hear the causes between your brethren, and judge justly between every man and his brother, and the stranger that is with him.'
- 5 A. is referring to the doctrine of the virginal birth of Christ.
- 6 There are two ways to understand *cognitor*, which we have translated 'judge'. The other possibility is to translate *cognitor* 'defender'. By agreement of the parties involved in a litigation, a 'defender' could stand in for and speak on behalf of either party. Cf. Gaius, *Institutes* 4.83; *Rhetorica ad Herennium* 2.13.20, and *C. Th.* 2.1.1–7. Cf. also Buckland and Stein, *Text-Book* 708–10; Thomas, *Textbook* 103–12. Until the reign of the emperor Justinian (527–65), the *cognitor* also shared, in whole or in part, the legal jeopardy of the party he represented.

Against this interpretation, Christ is himself cast in the role of judge (*cognitor*) who investigates and 'brings justice' into the proceedings. Such an interpretation is suggested by the text of Is 4.2, alluded to in the statement following (cf. below, n. 7). Moreover, in late antiquity, *cognitor* was also used as a term for 'judge'. Cf. *C. Th.* 10.10.20 (8 April 392): *cognitores ordinarii*. A. occasionally uses the term when he clearly means 'judge' (cf. especially *conf.* 10.1.1; *ep.* 144.3; 153.16; *c. Iul. imp.* 2.10.34). The wider context of the commentary also supports this understanding; in the end it is Christ who, as judge, refuses to condemn the woman (cf. below, § 6).

- 7 Cf. Is 11.2–4: 'And the Spirit of the Lord shall rest upon him . . . and he shall judge the poor with justice . . .'
- 8 Cf. Lev 20.10; Deut 22.22–4.
- 9 Cf. Mt 5.17–18.
- 10 *praevaricator legis*. In Roman law, the charge of *praevaricatio* concerned a collusion to offer a counterfeit prosecution or defence.
- 11 *praevaricatores legis*: cf. above, n. 10.
- 12 Here, A. calls Christ the 'voice of justice' (*vox iustitiae*). The technique used to unmask and defeat his adversaries is rhetorical, and derives from Socratic dialectic. The question 'who is without sin' is tactical; it establishes a common ground for assent between the parties to the dispute and thus lays the ground for the defeat of Christ's opponents. On the technique in general, cf. Cicero, *De finibus* 1.6.18. On A.'s admiration for Socrates' verbal acumen, cf. *civ.* 8.3; 14.8. Cf. also Cicero, *De oratore* 3.16.60.

For A., legal and rhetorical defeat of the Pharisees and Scribes was not

the sole end of Christ's use of dialectic. As Christ employed it, the art of dialectic drew out the implications of justice as yet uncovered from within the Mosaic Law. Christ therefore demonstrates that, in principle, justice thus holds truth and gentleness in perfect balance.

- 13 A. holds that Christ's unique condition of freedom from original sin and from all personal sin guarantees that he is the only completely just judge in history. Cf. Sermon 13.4–5 (pp. 121–3).
- 14 Cf. Letter 153.15 (pp. 79–80), where this same argument appears in relation to A.'s defence of bishops who appeal for clemency on behalf of criminals convicted of capital offences. Cf. also Sermon 13.8 (pp. 124–5).
- 15 I.e., Isaiah.

### Sermon 302

- 1 Laurence was a Roman deacon martyred under the emperor Valerian, probably in 258. Deacons in the ancient Roman church also served as treasurers or bursars. A. preaches this sermon on his feast-day shortly after the mob killing at Hippo Regius of an unidentified imperial official, associated perhaps with enforcing the collection of customs duties (cf. p. 274 n. 15). The theme of Christian non-violence is thus skilfully interwoven into A.'s representation of Laurence as a martyr who resisted unjust civil authorities by verbal, rather than physical, means.
- 2 Reading *sanctae* with *lectiones*.
- 3 Probably Mt 5.1–12, commonly referred to as the Beatitudes, and frequently read in A.'s church during the eucharist when martyrs' feast-days were commemorated.
- 4 The sign of the cross was traced on the forehead of initiates (catechumens) at the onset of their formal introduction to the Christian religion. At this point they were said to belong to Christ (cf. *Io. ev. tr.* 3.2), and looked forward to a more formal preparation for baptism. Cf. *conf.* 1.1.1; *cat. rud.* 26.50; *serm.* 32.13; 97A.3; 301A.8.
- 5 On 'guarantor' (*fideiussor*), cf. p. 261 n. 2.
- 6 Or, 'Many evil people say, "So much evil!"'
- 7 Referring to the mob killing of an imperial official, the major concern of this sermon. Cf. §§ 15–21.
- 8 On the conditions which A. held as requisite for true martyrdom, cf. p. 264 nn. 9 and 10.
- 9 On the role of this corrupt official, cf. p. 274 n. 15. It is possible that the higher import tariffs fraudulently charged at the city's port caused a sharp rise in the prices of goods sold in the market at Hippo Regius. Exorbitant tariffs might therefore have led to more widespread financial hardship and even ruin.