

The Patristic Consensus

For the Fathers of the early Church, the authority of the state to kill malefactors is taken for granted. Opinions differed on whether Christians should hold offices whose responsibilities include the judging and carrying out of capital punishments—pre-Constantinian authors said they should not, those writing after AD 313 said they should—but the principled legitimacy of the punishment itself is never questioned.

In this chapter I examine selected Patristic texts (writings of Church Fathers, statements of regional synods, and so forth) that deal with the question of capital punishment, beginning with Justin Martyr in the second century and ending with Pope Gregory I in the seventh. My intention is to set forth as simply and clearly as possible what Patristic writers held to be true about the morality of capital punishment, and, to the extent it can be discerned, why they held what they did.

Given the influence of Plato and Seneca on Patristic (and medieval) Christian writers, a brief word on their ideas concerning punishment is in order. In Plato we find two classes of offender, those for whom hope of reform is reasonable, and those who are beyond cure, or at least judged to be so. The purpose of punishment for the former is *reformation*—they endure the suffering of punishment for their improvement, namely, to become better persons and ideally to come to a thoroughgoing love of right. The incurable evildoer, however, is “a plague to the city.”¹ For such a one, “longer life is no boon . . . and his disease will bring a double blessing on his neighbors; it will be a lesson to them to keep themselves from wrong, and will rid society of an evil man.”²

Seneca employs medical imagery to describe the relationship of the criminal to civil authority. Dangerous sinners are like diseases to the community; and

civil magistrates, charged with the community’s welfare and hence with executing judgment against evildoers, are like physicians. “In only one particular,” Seneca writes, “will he [the civil leader] differ from the physician. For while one supplies to the patients to whom he has been able to give the boon of life an easy exit from it, the other forcibly expels the condemned from life. . . . not because he takes pleasure in the punishment of anyone . . . but that they may prove a warning to all.”³ Medical imagery recurs again and again throughout the Christian tradition, entering through the writings of Clement of Alexandria and finding its clearest and most influential expression in the writings of Aquinas.

Pre-Constantinian Writings

The second- and third-century Fathers rarely address the morality of the death penalty directly. Hence, we must need to draw out their ideas by inference. Three convictions discernable in Patristic texts as early as the second century merit attention: (1) that civil rulers have morally legitimate authority over life and death; (2) that this authority has been conferred by God and is testified to in Scripture; and (3) that Christian discipleship is incompatible with participation in violence and bloodshed. By the early third century these convictions coalesce into what I refer to as the “bifurcated teaching” of the pre-Constantinian Church on the morality of participation in bloodshed: it sanctions the actions of non-Christians in carrying out capital punishment, as well as their participation in public offices whose duties these include, but it expressly forbids the same roles to Christians and those aspiring to full membership in the Christian community.

Justin Martyr (d. ca. 165) is one of the first Fathers to give us a glimpse into what he thinks about capital punishment. Though he never states in his correspondence with the Antonine emperors that imperial authority extends to the taking of human life, we infer from what he says that he takes it for granted. In chapter 2 of his *First Apology*—a work protesting the imperial power’s unjust capital punishment of Christians—he writes: “As far as we [Christians] are concerned, we believe that no evil can befall us unless we be convicted as criminals or be proved to be sinful persons. You, indeed, may be able to kill us, but you cannot harm us.”⁴ Later he writes, “do not impose the death penalty against those who have done no wrong, as you would against your enemies.”⁵ In demanding due process for condemned Christians, Justin states that evildoers

who are *rightly* convicted should be duly punished: "we demand that the accusations against them [the Christians] be probed, and, if these be shown to be true, they be punished, as any guilty persons should be."⁶ Yet he knows full well that death is the punishment for the crimes for which Christians are being accused: "we know well that for such a profession of faith the punishment is death."⁷ Notwithstanding Justin's obvious use of rhetoric, we would do him a disservice to think he would commend by implication capital punishment for the guilty if he believed it to be wrong. The reflections on civil authority of Irenaeus (d. ca. 200) in *Against Heresies* reveal a similar position.⁸

The converted Athenian philosopher Athenagoras (second century), in *A Plea for the Christians*, mounts a defense, not unlike Justin's, against the unjust slaughter of Christians at the hands of false accusers.⁹ Like Justin, he demands that charges against Christians be thoroughly investigated, and, if sustained, Christians should be duly punished: "If, indeed, any one can convict us of a crime, be it small or great, we do not ask to be excused from punishment, but are prepared to undergo the sharpest and most merciless inflictions."¹⁰ He clearly takes the legitimacy of the death penalty, inflicted at the hands of the Romans, for granted when he writes, "if these charges are true [of atheism, cannibalism, and incest], spare no class: proceed at once against our crimes; destroy us root and branch, with our wives and children, if any Christian is found to live like the Brutes."¹¹ But when he speaks about Christian participation in bloodshed, his language is completely different:

For when they [our accusers] know that we [Christians] cannot endure even to see a man put to death, *though justly*, who of them can accuse us of murder or cannibalism? . . . But we, deeming that to see a man put to death is much the same as killing him, have abjured such spectacles. How, then, when we do not even look on, lest we should contract guilt and pollution, can we put people to death?¹²

In a similar manner, a Latin Father, Minucius Felix (second to third century), refuting the common charge that Christians drink the blood of murdered infants, writes in his *Octavius*: "We [Christians], however, are not allowed either to witness or to hear of human slaughter, and the awe we have of human blood is so great that we do not even taste that of animals for food."¹³

Tertullian (d. ca. 220) takes a step further and declares that Christians should be forbidden entirely from occupying offices that require sitting in judgment over people's lives or characters—"neither condemning nor fore-

condemning; binding no one, imprisoning or torturing no one."¹⁴ When asked if a soldier may be admitted to the Christian community, he answers, only the one "to whom there is no necessity for taking part in sacrifices or capital punishments."¹⁵ The soldier who becomes a Christian must either abandon military service altogether—lest he be forced to "resort to all kinds of excuses in order to avoid any action which is also forbidden in civilian life, lest [he] offend God"—or if he remains, must be prepared to undergo suffering and martyrdom similar to his non-military brethren, for the "Gospel is one and the same for the Christian at all times whatever his occupation in life."¹⁶ "Will a Christian," he writes, "taught to turn the other cheek when struck unjustly, guard prisoners in chains, and administer torture and capital punishment?"¹⁷

Yet the punishments inflicted by lawful authority, Tertullian insists, are legitimate and even good. "It is a good thing when the guilty are punished. Who will deny this but the guilty."¹⁸ The Apostle Paul, he recalls, admonished the Romans to be subject to the ruling power, because "there is no power but of God, and because (the ruler) does not carry the sword without reason, and is the servant of God, nay also, says he, a revenger to execute wrath upon him that doeth evil."¹⁹ Rulers are "handmaids of the divine court of justice, which even here pronounces sentence beforehand upon the guilty."²⁰ Tertullian makes clear in *De Anima* that the just punishments of civil authority include capital punishment. Speaking of the circumstances endured by human souls after bodily death and before resurrection, he writes, "those who die by violence, are also believed to be kept from Hades, especially those who die by cruel tortures, the cross, the axe, the sword, and wild beasts. But, death that comes from the hands of justice, the avenger of violence, *should not be accounted as violent*."²¹

Despite his acceptance of the institution, Tertullian shares the age-old disdain for the office of the hangman. In his Montanist writing, *De Resurrectione Carnis*, he notes that inanimate vessels and instruments share in the merits or disgrace of those who use them. The sword of a good and brave soldier, for example, secures a kind of praise by being a consecrated instrument. However, a cup "infected with the breath of . . . a hangman" (i.e., used by a hangman) is likely to be condemned (*damnare*) as vigorously as if it were the hangman's very kisses.²² He also rails in the *Apologia* against inordinately harsh capital laws. Recalling a time when laws allowed creditors to "cut in pieces" convicted debtors, he remarks: "Yet, by common consent, this cruel stipulation was later abrogated, and capital punishment was exchanged for a mark of disgrace. Proscription of a man's goods was intended to bring the blood to his cheeks rather than to shed it."²³

A similar sentiment is expressed in the *Didascalia Apostolorum*, dating from the middle of the third century. In book 4, bishops are warned against receiving offerings from ones whose lives are incompatible with the call to discipleship in the Christian community. A list that includes thieves, unjust judges, makers of idols, and murderers also includes those who oversee executions, i.e., hangmen.²⁴

Similar examples of the opposition of the early Christian community to involvement in bloodshed and capital judgments are found in the *Apostolic Tradition*, attributed to the theologian and pupil of Irenaeus, Hippolytus of Rome (d. ca. 236), and in the writings of the fourth-century Spanish Synod of Elvira (ca. 303). In the former we find a list of crafts and professions forbidden to Christians, among which are included various kinds of service to the pagan state: (1) "A soldier who is in authority must be told not to execute men; if he should be ordered to do it, he shall not do it." (2) "A military governor [literally, according to a footnote, "one who has authority over the sword"] or a magistrate of a city who wears the purple, either let him desist or let him be rejected." (3) "If a catechumen or a baptised Christian wishes to become a soldier, let him be cast out. For he has despised God."²⁵ Canon 73 of the Synod of Elvira teaches that if anyone through accusation or denunciation causes another to be exiled or sentenced to death, he is to be refused the sacraments at the end of his life.²⁶

Clement of Alexandria (d. ca. 215) is the first Church Father to think systematically about punishment. While he draws on ideas in classical philosophy, particularly those of Plato, Clement adopts only those that he thinks are compatible with divine revelation. And believing, as he did, that many of the ideas of Hellenic philosophy were plagiarized from Hebrew Scripture (see *Stromateis*, bk. 5, ch. 14), he has little scruple employing them for his own purposes. We might say that he used Greek philosophy to disarm philosophers who sought to discredit Christianity.

The principal questions he asks concern the reason and purposes of punishment. Punishment serves two main purposes, the correction of the one punished and the general protection of society. The former is more important to Clement: "The greatest, most fulfilling blessing of all is to be able to turn a person from wrongdoing to virtue and good deeds. The Law does this."²⁷ "Punishment inflicted for the greater good and for the advantage of the one punished is a corrective"; for "many passions are healed by punishment."²⁸ It is not surprising in this context that Clement employs Seneca's analogy between punishment and medicine, between the role of the physician and the role of penal laws.

Chastisements, according to Clement, are like "surgery performed on the passions of the soul, the passions are like a disease of truth, which need to be removed by the surgeon's knife."²⁹ He develops his medical imagery in the *Stromateis*. As physicians administer unpleasant treatments like lacerations and bitter draughts to drive away bodily disease, so the law prescribes penalties to free the soul from wickedness. When a doctor amputates a limb, he "is following the rationale of his profession," avoiding the infection of healthy members because of the presence of diseased ones. The stakes are higher with disease that infects the soul: "shall we not [then] submit to exile, the payment of fines, or prison, if only there is a chance of replacing unrighteousness with righteousness?"³⁰

Although punishment's highest aim is to reform its beneficiary, it must look also to the well-being of the larger community. For Clement, "when [the law] sees a person in a seemingly incurable state, plunged up to his neck in crime, then in concern that the others may be infected by him, as if it were amputating a limb of the body, it executes him for the greatest health of all."³¹ Such punishment serves also to check the wayward tendencies of others: "It is a great education when a malefactor sees a criminal punished, . . . the fear of the Lord breeds wisdom."³² Clement goes so far as to claim that the death penalty is a good for its beneficiary: "when a person is taken prisoner by criminal greed for gain and falls into irreparable vice, one who kills him would be doing him a benefit."³³ Thus, laws that inflict death act as a "benefactor."³⁴

Curiously, Clement mentions nothing (explicitly) about punishment's retributive aim. The purposes he mentions are all forward-looking. Should we conclude from this that he rejects the notion that persons are punished, not just for improvement or to protect society, but because *they did something wrong*? Not necessarily. Looking more closely, we see that his account implicitly acknowledges the centrality of retribution. In the *Paidagogos* he says that the "punishment that God imposes is due not to anger, but to justice."³⁵ Justice entails punishing those who deliberately choose evil and assigning punishments in due measure to the deserving. "It is each one of us who makes the choice to be punished, for it is we who deliberately sin."³⁶ And God, he continues, quoting Deuteronomy, "will render vengeance to [his] enemies, and . . . vengeance to them that hate [him]."³⁷ The concepts of justice, desert, and requital are all retributive terms. Granted, Clement uses them here in reference to divine punishments. But for Clement the aims of human punishment parallel the aims of divine punishment, and he consistently correlates the two throughout the *Paidagogos*. Moreover, he says in the *Stromateis* that we are punished "not that the sins which are done may be undone, but because they were done."³⁸

Origen (d. ca. 254), too, asks questions about the nature and purposes of punishment, echoing several ideas of Clement, his teacher and predecessor at the Alexandrian School. In his twelfth homily on Jeremiah he likens a wise judge to a doctor who hastens to amputate a festering limb before it spreads disease to the whole body; by refusing to spare one member, he spares many others. But consider the doctor, says Origen, who, fearing to make his patient suffer, delays a necessary amputation; his misplaced pity will surely bring greater harm to the body. A judge, therefore, must always be mindful of the welfare of the community when faced with the decision to spare a criminal. Origen gives an example of a judge charged with the case of a condemned young murderer; the judge is approached on the one side by the man's mother who intercedes that he pity her old age and spare her only son, and on the other by the condemned man's wife and soon to be orphaned children, who tearfully implore him to have pity. What should the judge do? Origen is clear: if he spares the man he disregards the good of the city and sends a murderer back to his evil. But if, with rational deliberation and without excess of either mercy or cruelty, the far-sighted judge considers the harm the man has done, there is no doubt he will eject him from the community of the living: if the judge "remains firm in judicial severity, one man will die, and provision will be made for the whole people."³⁹ Origen, like Clement, sees two goods to be gained for the community in following this course of action: on the one hand it frees the community from a harmful influence, and on the other it deters fellow members from similar evildoing.

Origen, who is unique among the early Fathers for his systematic use of Scripture in his theology, develops a fascinating notion of capital punishment as expiatory. In his eleventh homily on Leviticus he says that one who suffers death for a crime, presuming no other sin condemns him, will receive no further punishment for that crime after death: "the Lord will not punish twice for the same crime; [malefactors in this way] have received back for their sin, and the punishment for their crime has been purged."⁴⁰ In his fourteenth homily he says that death imposed as a punishment "is a purgation of the sin itself for which it is ordered to be imposed. Therefore, the sin is absolved through the death penalty" and nothing of it survives to testify against a man on his day of judgment.⁴¹ The capital commands of the Old Testament therefore are not cruel, as heretics complain, "but full of mercy" (*plenum misericordiae*), since those who suffer under them are more purged from sin than they are condemned.⁴²

It would be a mistake to interpret Origen's reflections on Leviticus and Jeremiah as having relevance only to the civil powers of the ancient Jewish state.

For Origen the same power inheres in the Roman emperor and lower magistrates. In *Contra Celsum* he holds that St. Paul's teaching in Romans 13 implies that civil authority has legitimate power over life and death:

We are not mad, nor do we deliberately rush forward to arouse the wrath of an emperor or governor which brings upon us blows and tortures and even death. For we have read the precept: "Let every soul be subject to the higher powers; for there is no power except by God's permission: the powers that be are ordained of God; so that those who resist the power resist the ordinance of God."⁴³

Whether Origen believed that the power was passed from the Jews to secular authorities with the advent of Christ, or always inhered in the latter, is not clear. What is clear is his belief that with the passing of John the Baptist and the coming of Christ, the power receded from the Jews and was left in the hands of civil authority. In his commentary on Matthew he writes:

It seems to me that, just as the law and the prophets remained secure down to John the Baptist, after whom the prophetic grace receded from the Jews, so too the ruler's power to kill those judged worthy of death prevailed down to John; with the last of the prophets killed by Herod, and impermissibly at that, the king of the Jews was deprived of the power to kill. For unless the power had fallen from Herod, Pilate would not have condemned Jesus to death, but Herod, with the advice of the priests and elders of the people, would have been sufficient to do it.⁴⁴

Origen also states in his commentary on Romans that the Old Law was rendered a dead letter when the Son of God took flesh. "The earthly Jerusalem has been overturned, together with the temple and altar and everything which went on there. . . . It was not possible to punish a murderer, nor to stone an adulteress, since the power of the Romans reserved these things for themselves."⁴⁵

Although the power to punish receded from the Jewish community, it did not pass, Origen makes clear, to the ecclesiastical authorities of the Church. In his eleventh homily on Leviticus he writes:

Among Christians, however, if adultery is committed, there is no precept that the adulterer or adulteress be punished with bodily death, nor has the

power to condemn an adulterer to physical death been given to a bishop of the church as was done, according to the prescriptions of the Old Law, by a priest of the people.⁴⁶

Despite his outspoken defense of capital punishment justly inflicted by civil authority, Origen, like his predecessors, thinks differently when it comes to Christian participation. In fact, in Origen's case the "bifurcated teaching" of the pre-Constantinian Church could not be more pronounced. In book 7 of *Contra Celsum*, Origen asks whether the manner of life of the Jews under the Mosaic law was compatible with the manner of life enjoined by the Gospel of Christ. His answer is that Jewish life could not remain as it was without modification because, among other things, "It was impossible for Christians to follow the Mosaic law in killing their enemies or those who acted illegally and were judged to be deserving of death by fire or by stoning."⁴⁷ The basis for this bifurcation in Origen's mind is found toward the end of the work. Celsus has argued that loyal citizens, hearkening to the king's command, should take up arms in defense of the state. Origen's response refers explicitly to warfare, but its logic can be extended to the death penalty:

We would also say this to those who are alien to our faith and ask us to fight for the community and to kill men: that it is also your opinion that the priests of certain images and wardens of the temples of the gods, as you think them to be, should keep their right hand undefiled for the sake of the sacrifices, that they may offer the customary sacrifices to those who you say are gods with hands unstained by blood and pure from murders. And in fact when war comes you do not enlist the priests. If, then, this is reasonable, how much more reasonable is it that, while others fight, Christians also should be fighting as priests and worshippers of God, keeping their right hands pure and by their prayers to God striving for those who fight in a righteous cause and for the emperor who reigns righteously, in order that everything which is opposed and hostile to those who act rightly may be destroyed?⁴⁸

We see here two standards, one for Christians who ought to be treated as priests making intercession on behalf of the community, the other for righteous pagans, including the king. Christians may not stain their hands with blood lest their sacrifices of prayer (on behalf of the "righteous" bloody exploits of the king!)

be unacceptable to God; but non-Christians, presuming their cause is righteous, are not forbidden from shedding blood.

Cyprian of Carthage (d. ca. 258) likewise expresses the early Patristic bifurcation. In a letter to the exiled bishop of Rome, Cyprian writes:

[Christians] do not even fight against those who are attacking since it is not granted to the innocent to kill even the aggressor, but promptly to deliver up their souls and blood that, since so much malice and cruelty are rampant in the world, they may more quickly withdraw from the malicious and the cruel.⁴⁹

At the same time, Cyprian implies elsewhere that he accepts the legitimacy of the death penalty. In a letter criticizing the unjust killing of Christians, Cyprian writes, "to be a Christian either is a crime or it is not. If it is a crime, why do you not kill him who confesses it? If it is not a crime, why do you persecute the innocent."⁵⁰ He argues that if he had lied about his Christian faith under interrogation, he would warrant for himself the severest treatment: "If out of fear of your punishment I concealed [it] with lying deceit . . . then I ought to have been tortured."⁵¹ In a letter expressing his disgust and general horror at all bloodshed, in particular the bloodshed of the Roman games, he implies that the games would be less reprehensible if men were fighting not for a kind of sanguinary glory, but because they had been condemned for crimes: "What is this, I ask you, of what nature is it, where those offer themselves to wild beasts, whom no one has condemned?" And again: "They fight with beasts *not because they are convicts* but because they are mad."⁵²

Lactantius (d. ca. 320), writing at the dawn of the Constantinian age, is perhaps the last Church Father to exhibit the bifurcation we have been examining. Writing on the familiar topic of the bloody games in the arena in his great treatise on the Christian faith, the *Divine Institutes*, Lactantius argues:

when God forbids us to kill, he not only prohibits us from open violence, which is not even allowed by the public laws, but he warns us against the commission of those things which are esteemed lawful among men. Thus it will be neither lawful for a just man to engage in warfare . . . nor to accuse any one of a capital crime, because it makes no difference whether you put a man to death by word, or rather by the sword, since it is killing itself which is prohibited. Therefore, with regard to this precept of God, there

ought to be no exception at all; but that it is always wrong to kill a man whom God willed to be an inviolable animal [*sacrosanctum animal*].⁵³

We might conclude from this passage that Lactantius rejects every form of homicide. But what he says elsewhere militates against such a conclusion. In the paragraph preceding this passage, Lactantius refers to the victims of public executions as having been "justly condemned." In his *Treatise on the Anger of God* he considers the argument that if God "ought to be called injurious [because he] visits the injurious with punishment," it follows that human laws "which enact punishment for offenders" should likewise be called injurious, as should human judges who "inflict capital punishments on those convicted of crime." Lactantius rejects these conclusions: "But if the law is just which awards to the transgressor his due, and if the judge is called upright and good when he punishes crimes . . . it follows that God, when he opposes the evil, is not injurious."⁵⁴ The exceptionless prohibition against killing that Lactantius defends in the *Divine Institutes* clearly applies only to the members of the Christian community.

Post-Constantinian Writings

If we grant two Patristic assumptions, namely, that political power is divinely instituted and that inherent in that power is the right to kill malefactors, then the idea that the exercise of political power is incompatible with membership in God's special community, the Church, suffers from an obvious tension. It is therefore not surprising, given the unique state of affairs brought about by the conversion of Constantine, that a development took place in the traditional teaching. Both the need (or perceived need) for Christians to accept a share in the duties and prerogatives of political power, and the baptismal candidacy of those who already had a share, forced a reappraisal of the question of the relationship of Christians to the exercise of earthly authority. History shows the results of that reappraisal: Constantine, the first Christian ruler, rather than being an anomaly in an otherwise unbroken tradition, becomes the harbinger of a new tradition. And as we might suspect, with the new tradition comes a new set of convictions and practices surrounding the sensitive topic of lawful killing, the most noteworthy being that clerics begin to express the self-conscious conviction that it is their business *qua* clerics to exhort the faithful in positions of political authority to follow the example of the Gospels and desist from harsh punishments, particularly from capital punishments. In this conviction we find

an antecedent to the later position of the medieval Church, which will formally and juridically teach that clerics may have no part in the judging and carrying out of capital punishments.

John Chrysostom (d. 407), archbishop of Constantinople from 398, offers a unique illustration of this development. Early in his priestly ministry an event in Antioch forced Chrysostom to confront in a practical way the problem of the death penalty. Certain inhabitants of the city, stirred to anger by the levy of a new imperial tax, toppled and dragged through the city the imperial monuments of Emperor Theodosius (r. 379–392), his wife Flacilla, his father, and his two sons. The seditious act was put down by archers, and an imperial investigation into the event was launched from Constantinople. When passions cooled, the citizens of Antioch, reflecting on the treasonous act, grew fearful of a harsh requital. With the circulation of a rumor that the Emperor planned to raze the city to the ground and put all its citizens to the sword, the terrified citizens of Antioch turned to the newly ordained priest Chrysostom for guidance and comfort.⁵⁵ In Lent of that year (AD 387), Chrysostom delivered a lengthy series of homilies, which come down to us as the *Sermons on the Monuments*.⁵⁶

In homily 6, Chrysostom, discussing the "fear" Christians should have of civil leaders, warns his listeners that if one were "to deprive the world of magistrates, and of the fear that comes of them, houses at once, and cities, and nations, would fall on one another in unrestrained confusion, there being no one to repress, or repel, or persuade them to be peaceful, by the fear of punishment!"⁵⁷ This sentiment runs throughout the homilies. The wrath of the emperor toward the city is deserved, and the faithful ought to rue the immoderate actions of their fellows, whom Chrysostom refers to as "vile, yea, thoroughly vile persons." Nowhere does he question the legitimacy of the emperor to punish the city.

Chrysostom recalls the forbearance of the emperor, who, in the past, out of respect for the season of Lent, had released a number of men sentenced to be executed. Praising the emperor's benevolence, Chrysostom nevertheless adds that the executions would have been a "justifiable slaughter."⁵⁸ In homily 13, recalling the words of an envoy sent to plead the city's case before the emperor, Chrysostom states: "although you [the emperor] were to overthrow; although you were to burn; although you were to put to death; or whatever else you might do, you would never yet have taken on us the revenge we deserve."⁶⁰ Notwithstanding the rhetorical context, these are hardly the words of one who rejects the imperial prerogative of employing not only punishment but capital punishment.

At the same time, Chrysostom makes every effort to see that the innocent and guilty alike are relieved from the sanguinary threat of punishment. The

priesthood, he maintains, is like civil authority; although employing different means, it too is divinely sanctioned for the well-being of society. God provides for the safety of the community in two ways, through the fear of rulers and the consolation of priests. While rulers rightfully

make you afraid, and render you anxious, the Church, which is the common mother of us all . . . administers daily consolation. . . . He Himself [God] hath armed magistrates with power; that they may strike terror into the licentious; and hath ordained His priests that they may administer consolation to those that are in sorrow.⁶¹

A striking illustration of Chrysostom's ideas in action is found in homily 17, where he gives a moving account of the role that certain monks played in turning the emperor's wrath to mercy. Having heard of the impending calamity, they descended from their mountain dwellings, entered the city, and interposed themselves between the people and the emperor's magistrates. Without minimizing the gravity of the crimes—"We [monks] confess that the crimes committed are very heinous"⁶²—they urge clemency on behalf of the Antiochenes: "We will not give you leave, nor permit you to stain the sword, or take off a head. But if ye do not desist, we also are quite resolved to die with them."⁶³ To kill the condemned would be to "put to death the image of God," which, unlike toppling the imperial statues, is irrevocable; "how will ye be again able to revoke the deed! or how to reanimate those who are deprived of life, and to restore their souls to their bodies?"⁶⁴ Yet in all this the monks neither condemn the threatened penalty nor question the emperor's right to command what they are willing to die to prevent.

The position expressed in Chrysostom was already being taken for granted a half century earlier by Eusebius (d. ca. 340), bishop of Caesarea. Praising the first Christian emperor for his paternal mildness in the exercise of justice, Eusebius writes: "throughout the reign of Constantine the sword of justice hung idle everywhere, and both people and municipal magistrates in every province were governed rather by paternal authority than by any constraining."⁶⁵ Yet he does not refrain from praising the Emperor for his swift execution in the cause of justice. Reporting on the execution of Constantine's imperial rival, Licinius, Eusebius writes: "Accordingly the tyrant himself, and they whose counsels had supported him in his impiety, were together subjected to the just punishment of death."⁶⁶

We find something similar in Gregory of Nazianzus (d. 389). Urging an angry Christian magistrate to exercise moderation in punishment, Gregory

notes that it is "with Christ that you bear your authority and with Christ you administer your office of governance. From him you have received the sword, not so much that you may use it, as that you may threaten and deter."⁶⁷ Like Chrysostom's monks, Gregory exhorts the magistrate: "You are the image of God and you command God's truth also to those who are made in God's image. . . . Let the fact of our common nature persuade you [to mildness]; let your own likeness move you; yoke yourself to God, not to the prince of the world; to the kindly Lord, not to the harsh tyrant."⁶⁸ "The Romans have their laws," he says elsewhere, "we have ours. But their laws exceed measure and are harsh, and go as far as capital punishments; our laws in turn are benign and human and do not make use of power in madness against those from whom we receive injury."⁶⁹

Despite his obvious dislike for capital punishment, however, Gregory takes its legitimacy for granted. In a letter to the citizens of Nazianzus he writes: "let us not act in such a way that on account of our crimes we become objects of the law's hatred and be *due* for the avenging sword."⁷⁰

The position of the great fourth-century bishop of Milan, Ambrose (d. 397), is epitomized in his letter to Studius, a Christian judge who had sought advice on how he ought to approach the death penalty.⁷¹ If it were not for the words of the Apostle (Romans 13:4), Ambrose writes, he would fear to venture a response. We praise magistrates who, having exercised capital punishments, abstain from the sacraments of the Church, but in light of the authority of the Apostle, "we dare not deny them communion."⁷² Ambrose continues:

Authority, you see, has its rights; but compassion has its policy. You will be excused if you do it; but you will be admired if you refrain when you might have done it. And, as a priest, I have no more enthusiasm for leaving people to rot in noisome dungeons without trial, only to set them free later. It might transpire, after all, that once the case had been tried, the convicted person could sue successfully for pardon or, at any rate, better conditions in which to "live out his days in jail" (a quotation, I can't think from whom). Yet I know that pagan governors have sometimes made a boast of returning from their tour of duty without a drop of blood on their blade. If pagans can do as much, what should Christians be doing?⁷³

Ambrose obviously believes that not only Christians share a distaste for bloody punishment; otherwise, why would he have commended the example of the pagans? Nevertheless, Christ's example is the real basis for his position. He

recalls Christ's response to the woman caught in adultery.⁷⁴ Christ's example, Ambrose argues, is a fitting one for Christian magistrates to follow. So long as clemency supplants severity, opportunity exists for the guilty to do penance and receive the remission of sins.⁷⁵ Reflecting on the logic of Cain's sentence in *On Cain and Abel*, Ambrose writes: "The person, therefore, who has not spared the life of a sinner has begrudged him the opportunity for the remission of his sins and at the same time deprived him of all hopes of remission."⁷⁶ Further, "God in His providence gives this sort of verdict so that magistrates might learn the virtues of magnanimity and patience, that they may not be unduly hasty in their eagerness to punish or, because of immature deliberation, condemn a man in his innocence."⁷⁷ Moreover, "God, who preferred the correction rather than the death of a sinner, did not desire that a homicide be punished by the execution of another act of homicide."⁷⁸ It follows for Ambrose that Christians, who should refuse to despair of the salvation of anyone, should *never* deprive another of the opportunity of repentance, which is precisely what capital punishment does.

From the point of view of our faith, no one ought to slay a person who in the course of nature still would have time for repentance up to the very moment of his death. A guilty man—provided a premature punishment had not deprived him of life—could well procure forgiveness by redeeming himself by an act of repentance, however belated.⁷⁹

But what if the defense of society requires a criminal on account of some sin to die? Then, says Ambrose, "See to it that Christ is infused into the act of slaying an impious man and that sanctification accompany and be part of your attempt to abolish what is abominable."⁸⁰

For Ambrose, like Chrysostom, the roles of priest and magistrate are complementary. In *Cain and Abel* Ambrose writes: "Sins are forgiven by the priest in his sacred office and ministry. They are punished, too, by men who exercise power temporarily, that is to say, by judges."⁸¹ Regarding capital punishment, the roles exist in tension. As Ambrose's letter to Studius illustrates, the ministry of priesthood entails not merely forgiving sins, but also pressing for clemency for the condemned. Priests ought to have nothing to do with capital punishment. Why not then reject the death penalty altogether? For Ambrose the answer is plain: deny its legitimacy and you deny a teaching of Scripture. Hence, like other fourth-century Fathers, we find built into his account a tension between the urgings of Christian mercy and the prerogatives of legitimate authority.

A decree issued by the Council of Rome (382) during the pontificate of Damasus I illustrates this tension. Canon 13 of the decree states:

Moreover, it is obvious that those who have obtained secular power and administered secular law cannot be free from sin. For while the sword is unsheathed either unjust judgment is conferred, or tortures administered in the prosecution of cases, or they plan for executions to be titillating, or derive titillation from them when they are planned; such men, associating anew in these things themselves which they have renounced, change the practical teaching which has been handed down.⁸²

The Latin is obscure.⁸³ It is unclear to what extent the canon should be understood as asserting that those who exercise capital punishment, as distinct from other punishments, "cannot be free from sin." What is the "practical teaching" such men change? This is also unclear. What is clear, however, is that the canon reflects the concern of the early Church in relation to the duties and office of the public magistrate.

We hear in canon 13 the echo of a tradition that is already being replaced. By the time Pope Innocent I (r. 401–417) addresses a letter to the bishop of Toulouse, twenty-three years later (405), the echo is more faint. Responding to a query about civil officers who carry out judicial tortures or capital punishment after their baptism as Christians, the pope states:

About these things we read nothing definitive from the forefathers. For they had remembered that these powers had been granted by God and that for the sake of punishing harm-doers the sword had been allowed; in this way a minister of God, an avenger, has been given. How therefore would they criticize something which they see to have been granted through the authority of God? About these matters therefore, we hold to what has been observed hitherto, lest we may seem either to overturn sound order or to go against the authority of the Lord.⁸⁴

Saint Augustine (354–430) picks up where canon 13 leaves off. In many ways his immensely influential ideas epitomize the fourth-century views we have been considering. For nearly four decades—virtually the entire period of his tumultuous engagement with the Donatists—he defends the view of his father in faith, Ambrose, that public authority possesses the right to kill malefactors, but that Christian faith, never losing hope for the repentance of a sinner, urges otherwise.⁸⁵

In an early dialogue, *De Libero Arbitrio*, begun within a year of his conversion, Augustine puts the following words into the mouth of his interlocutor, Evodius: "If murder means taking the life of a man, this can sometimes happen without any sin. When a soldier slays the enemy, when a judge, or his deputy, executes a criminal . . . I do not think that these are guilty of sin in killing a man." Augustine responds, "I agree, but such men are not usually called murderers."⁸⁶ In his *Commentary on the Sermon on the Mount*, written five years later (around the time he begins active engagement with the Donatists), he reaffirms this view. Conscious of the Marcionite and Manichaean rejection of the Old Testament accounts of corporal punishment, especially capital punishment, Augustine argues that "noble and saintly men [*virii sancti*] inflicted death as a punishment for many sins . . . so that the living would be struck with salutary fear."⁸⁷ He is referring, of course, to the men of the Old Testament. These men exercised capital punishment not only as an example to others, but also as a benefit to those who are killed, whose sufferings, because of sin, "might have become worse if they had continued to live." Augustine says very clearly that the authority by which these men exercised the death penalty was God-given and "not exercised rashly."⁸⁸ If there were any doubt as to whether the same authority has endured into the Christian dispensation, Augustine dispels it by recalling the story of Ananias and Sapphira (Acts 5:1–11),⁸⁹ who collapse and die when Peter charges them with lying to God. "Accordingly," Augustine writes, "such [capital] punishments were not entirely lacking even after He [Christ] had taught them [the disciples] the meaning of loving one's neighbor as one's self. . . . However, such punishments were then much less frequent than in the Old Testament."⁹⁰

Augustine's confidence in the duties and prerogatives of civil authority, like the confidence of so many of the Fathers, is rooted in his interpretation of Romans 13. Writing to the schismatic Emeritus, who claimed that Christians should treat no one, not even the wicked, with severity, Augustine responds: "Very well, suppose it is not allowed; does that make it right to oppose the powers which are set up for that purpose? Or shall we erase the Apostle? Do your books contain what I quoted a while ago [Rom. 13:2–4]?"⁹¹ Augustine says (or at least implies) repeatedly that the institution of earthly authority includes the power over life and death:

Surely, it is not without purpose that we have the institution of the power of kings, the death penalty of the judge, the barbed hooks of the executioner, the weapons of the soldier, the right of punishment of the overlord,

even the severity of the good father. All those things have their methods, their causes, their reasons, their practical benefits.⁹²

On the topic of self-defense, Augustine writes:

In regard to killing men so as not to be killed by them, this view does not please me, unless perhaps it should be a soldier or a public official. In this case, he does not do it for his own sake, but for others or for the state to which he belongs, having received the power lawfully in accord with his public character.⁹³

Again, speaking of Moses' slaying of the Egyptian in his *Reply to Faustus the Manichaean*, Augustine says: "In the light, then, of the eternal law, it was wrong for one who had no legal authority to kill the man, even though he was a bad character, besides being the aggressor."⁹⁴ The Lord's rebuke to Peter to put away his sword (Matthew 26), Augustine adds, was because Peter did not hold properly constituted authority: "To take the sword is to use weapons against a man's life, without the sanction of the constituted authority."⁹⁵ Augustine held this conception of civil authority to the end of his life. In his greatest and most mature work, *De Civitate Dei*, finished four years before his death, he writes:

The same divine law which forbids the killing of a human being allows certain exceptions, as when God authorizes killing by a general law. . . . Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment, "Thou shalt not kill," to wage war at God's bidding, or for the representatives of the State's authority to put criminals to death, according to law or the rule of rational justice.⁹⁶

Given Augustine's theology, rejecting the death penalty would have been tantamount to rejecting the words of the Apostle, as well as making an important concession to Marcionism or Manichaeism. But there is no question that Augustine hated capital punishment and, given the chance, would have ended it completely, at least in North Africa. Like Ambrose and Chrysostom, he believed that his vocation as a priest and bishop was to prepare the way for men and women to come to Christ—in the words of the pagan Nectarius, "to secure salvation for men, to be their advocate on the better side in their trials, and to

merit from Almighty God pardon for the sins of others."⁹⁷ It was "part of [his] priestly duty to intercede for condemned persons" because, he says, we priests "are forced by our love for humankind to intercede for the guilty lest they end this life by punishment, only to find that punishment does not end with this life."⁹⁸ He illustrates these sentiments in a series of letters to Christian magistrates (dating from approximately the turn of the fifth century to AD 415), in which he argues in the strongest possible language for clemency on behalf of capital offenders. In *Letter 86* (AD 405), referring to "the bold presumption of the heretics," he says: "And by the help of the Lord our God you will undoubtedly take measures to cure the swelling of this accursed pride, by the repression of fear, so as not to have to cut it out by measures of vengeance."⁹⁹ In *Letter 100* (AD 409), written at the height of the Donatist controversy to a proconsul of Africa, Augustine says that he fears the magistrate will punish the outrages of the heretics "with more regard for the gravity of their crimes than for the exercise of Christian clemency."¹⁰⁰ "[W]e wish them to be restrained, but not put to death"; "we do want public authority to act against them, but not to make use of the extreme punishment which they deserve."¹⁰¹ "Act against their offenses so that some of them may repent of having sinned."¹⁰² In *Letter 104* (AD 409) he maintains that Christians punish "out of kindness and to their [the criminal's] own benefit and improvement."¹⁰³ Challenged to moderate his own wrath lest in judging he be found to condemn the innocent, Augustine responds: "Have no fear, then, that we are plotting destruction for the innocent; we do not even wish the guilty to suffer a fitting punishment, restrained as we are by that mercy which, together with truth, we love in the Lord."¹⁰⁴ And in *Letter 139* (AD 412) he entreats that certain malefactors be punished with "something short of death"; this, he argues, would serve as "an example of Catholic moderation."¹⁰⁵

Augustine could be persuaded that the coercion of heretics to right belief was an appropriate use of secular power.¹⁰⁶ Yet the more he is willing to concede and even promote its use, the more he inveighs against the death penalty. Although coercion might be effective for returning the erring to the faith, killing heretics is shedding men's blood in defense of the Church, something which must never be done.¹⁰⁷ Two consecutive letters to Christian magistrates, *Letter 133* and *Letter 134* (AD 412), concern an incident in which two priests suffered wrongly at the hands of angry Donatists (one priest was killed, the other maimed). In both letters Augustine mentions the deep anxiety he experiences lest the culprits, called to suffer "in proportion to their deeds," be sentenced to death.¹⁰⁸ In both he acknowledges the magistrate's authority to inflict punishment, in *Letter 134* implying that this includes the authority to inflict death,¹⁰⁹ in

both he rejects retaliation and revenge as a motive for punishment; and in both, appealing to the faith of the Christian judges, he urges that the punishment be carried out in such a way as to hold out for the offenders hope of repentance. In *Letter 134* he writes: "If I were making my plea to a non-Christian judge, I should deal differently with him," although, he says, he would still present the case for Christian mercy. "But now, since the matter is being brought before you, I follow another method, another argument. We see in you a governor of exalted power, but we also recognize you as a son with a Christian idea of duty."¹¹⁰ If there is any possibility of emendation for evildoers, Augustine entreats, may "you spare them, now that you have arrested, summoned, and convicted them. . . . [May] you lengthen the span of years for the living enemies of the Church that they may repent."¹¹¹ What if such men are found to be incorrigible? Augustine replies,

extreme necessity might require that such men be put to death, although, as far as we are concerned, if no lesser punishment were possible for them, we should prefer to let them go free, rather than avenge the martyrdom of our brothers by shedding their blood. But, now that there is another possible punishment by which the mildness of the Church can be made evident, and the violent excess of savage men be restrained, why do you not commute your sentence to a more prudent and more lenient one, as judges have the liberty of doing even in non-ecclesiastical cases?¹¹²

Augustine is not above using threats in order to limit the infliction of the death penalty. A fascinating example is a letter from Augustine to the bishop of Thagaste in AD 422. A serious problem had broken out in North Africa from slave dealers, who were "draining Africa of much of its human population and transferring their 'merchandise' to the provinces across the sea."¹¹³ Augustine urges the local bishop to eschew the unusually harsh capital laws inflicted for such crimes. If Christian moderation is not expressed by the local bishop, Augustine warns, he himself might cease helping to apprehend the pirates for fear that, if apprehended, they would be put to death. The result would be that more unfortunate victims are carried off into servitude. Augustine strongly recommends that the bishop work for the promulgation of new laws annexing financial rather than capital penalties to such crimes.¹¹⁴

Leo the Great, writing thirty years later, is more sanguine about harsh penal laws. Like ecclesiastical writers in the Middle Ages, he thinks the Church should have nothing directly to do with capital punishment. Nevertheless, the

harsh decrees of secular rulers can work in cooperation with the Church's pastoral ministry. For Leo,

this severity was for a long time an assistance to the mildness of the Church which, though relying upon priestly judgment and shunning bloody punishments, nevertheless is assisted by the stern decrees of Christian rulers at times when men, who fear bodily punishment, will have recourse to merely spiritual correction.¹¹⁵

A much later passage from Gregory the Great (d. 604), in contrast, illustrates the characteristic mildness of Ambrose and Augustine. In a letter to the deacon Sabinianus, Gregory addresses the false charge that a certain bishop named Malchus had been "put to death in prison for money," with the implication that the pope himself abetted the cruel deed. Gregory responds,

if I their servant had been willing to have anything to do with the death of Lombards, the nation of the Lombards at this day would have had neither king nor dukes nor counts, and would have been divided in the utmost confusion. But, since I fear God, I shrink from having anything to do with the death of any one.¹¹⁶

M. B. Crowe, in an influential article on the death penalty published in 1964, claims at the outset of his examination of the writings of the Fathers that "no consensus of the Fathers and ecclesiastical writers emerges."¹¹⁷ How does Crowe's assertion correspond to our findings? Throughout the Patristic period, as we have seen, texts that question the prerogative of civil authority to exercise the death penalty are notably absent. In those accounts that address the question directly we find a virtually unanimous acceptance of such authority. Where reasons are elaborated, this acceptance is invariably grounded in an appeal to Scripture, in particular, Romans 13. Although opinions diverge between pre- and post-Constantinian authors over the question of admitting Christians to the office and prerogatives of civil magistrate, a consistent thread runs throughout: both before and after the Edict of Milan, Patristic writers perceived an incongruity between Christian discipleship and taking part in the execution of criminals. Admittedly, this common theme plays itself out differently in the two periods. But given the Patristic presuppositions concerning the nature of civil authority, together with the dramatic historical turn at the beginning of the fourth century, there is more agreement than disagreement between the two

positions. Given all this, there seems to be (*pace* Crowe) sufficient warrant for speaking of a Patristic consensus.

Francesco Compagnoni has held that the Church's acceptance of Christians into the office and prerogatives of the civil magistrate was little more than a capitulation to the structures of an increasingly Christianized Empire.¹¹⁸ This seems to me simplistic. Although a charge of uncritical acceptance might be leveled against Eusebius, taken up as he is with the enthusiasm of the Constantinian moment, such a charge is hard to sustain against Church Fathers like Ambrose and Augustine. For them the issue hinged as much on conscientious theological reflection as it did on circumstances. The precepts of the Old Testament, together with the commonly accepted interpretation of Romans 13:1-4, provided a knockdown argument against rejecting the death penalty. The question of Innocent I, "How therefore would they criticize something which they see to be granted through the authority of God?" no doubt weighed heavily on the minds of the Church Fathers. Paul, they believed, had taught that the authority to punish (or at least to threaten) with death was necessary for the preservation of the social order. The empire was gradually becoming Christian, yet evil-doing, whether by violent heretics or barbarian marauders, was obviously not abating. Paul's teaching must have seemed as relevant as ever. They had both theological and practical reasons not to abandon their interpretation of Romans 13. It is not surprising that when circumstances after AD 313 made it virtually impossible for Christians to avoid involvement in civil administration, the Church acquiesced to the idea that Christians could legitimately share in duties once reserved to pagans. At the same time, the faith that Christian magistrates confessed made forceful claims, as Augustine makes clear, on the practical carrying out of those duties.