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Friendship and Moral Formation: Implications for Restorative Justice  
Sarah Stewart-Kroeker

In his role as bishop, Augustine regularly intercedes on behalf of criminals or wrong-doers in matters related to actions committed against or within the Christian church. In many cases, he pleads for greater leniency for the wrong-doers and argues against retributive punishment. In one notable exchange with Nectarius, he argues for punishment where his interlocutor is reluctant to administer it. All of these intercessions are issued against the backdrop of his reflections on the nature of discipline – its aims, its purposes, its execution. For Augustine, discipline is fundamentally concerned with the health and reform of the wrong-doer. He thus both distinguishes between and joins together various elements of his thought on discipline: punishment (*supplicium*) and correction (*correctionis*) or healing (*curare*); the obligations of civil authority (*necessitate regendae tuendaeque rei publicae*) and the Christian duty to intercede for the sake of mercy (*misericordia*) and love (*caritas*). Augustine emphasizes the importance for justice of considering how a wrong-doer might best be afforded the opportunity to reform and how such reform might be encouraged and conducted should they wish. His emphasis on restoring the wrong-doer to health (*salutem*) and to relationship in a community resonates with the aims of restorative justice. Central to his understanding of how such restoration is possible is the moral formation that happens through friendship. In this paper, I will explore the resources and implications of Augustine's thought on discipline and reform for restorative justice. I will examine in particular the practice of solitary confinement in the American criminal justice system and the Circles of Support and Accountability program that assists sex offenders in re-integrating into society after their prison terms. I use Augustine's emphasis on the restoration of

the wrong-doer through morally formative friendship as a model for addressing the relationship between the wrong-doer and a society often fearful of them.

It must be noted that restorative justice is a rather large umbrella within which many initiatives fall. Howard Zehr, a prominent founder of the restorative justice movement in the United States, defines restorative justice as an understanding of crime as a violation of people and relationships and a response to crime that aims at restoring broken relationships and seeks healing for those involved.<sup>1</sup> My task here is not to undertake a comprehensive study of the principles of restorative justice but specifically to examine the role of human fellowship and the formation of supportive relationships as a central aspect of addressing the harms inflicted by wrong-doing. My focus in this paper is primarily on addressing the restoration of the wrong-doer to health and to community. My treatment here does not extend to the restoration of the sufferer of wrong-doing<sup>2</sup> or to the significant work of restorative justice in carrying out victim-offender mediation and reconciliation. Alongside Augustine, I ponder the challenges, implications, and some of the logistics involved in aiming at the healing of the wrong-doer and their restoration of society.

This is not to say that Augustine's understanding of justice coheres straightforwardly with that of restorative justice. Indeed, Augustine assumes a basic retributive judiciary justice structure,<sup>3</sup> in which the state adjudicates crime and administers punishment.<sup>4</sup> As bishop,

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<sup>1</sup> See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* 3<sup>rd</sup> ed. (Scottsdale: Herald Press, 2005).

<sup>2</sup> On this topic, I note as a potential resource the forthcoming dissertation of my colleague Melanie Webb of Princeton Theological Seminary that develops an Augustinian model of responding to the trauma of rape victims.

<sup>3</sup> As he writes in *De civitate dei* the task of justice is "to assign to each his due [*sua cuique tribuere*]." *civ. dei*. XIX.4, trans. Henry Bettenson (New York: Penguin, 1972).

<sup>4</sup> E.g. "It's only bad people who vent their rage on bad people. The obligations of authority [*potestatis necessitas*] are another matter. Because the judge is frequently compelled to unsheathe the sword, and he would prefer not to strike. As far as he is concerned, you see, he was willing to pass a sentence short of bloodshed; but perhaps he didn't want law and order [*publicam disciplinam*] to be undermined. It was the concern of his profession [*professionem*], of

however, he intercedes in this structure in order to temper this strictly retributive model with *caritas*.<sup>5</sup> For Augustine, justice is a form of love and thus is characterized by the right and harmonious relationship of human beings with one another and with God.<sup>6</sup> In his intercessions he seeks to expand the judiciary imagination of his interlocutors who occupy positions of civic authority to consider the work of justice not only in terms of “just deserts” but also in terms of the healing of the wrong-doer, the demands of Christ-like love, and the possibilities for restoration implied in Christian fellowship.<sup>7</sup> To this end Augustine employs a supplementary form of reasoning about justice – a restorative reasoning – in relation to the assumed retributive framework of the judiciary system. This restorative reasoning incorporates into the administration of justice the loving discernment of the particular needs and relationships at play in a given situation in order to seek a more profound resolution than a merely retributive or judiciary framework offers. Augustine’s ecclesial and eschatological grounding also introduces important distinctions from the restorative justice framework. For Augustine, the temporal restoration of the wrong-doer and the broken relationships of neighbor-love aims at an eternal and eschatological restoration of the sinner to God and the communion of saints. Given that he interacts as an ecclesial authority in matters governed by public and civic authorities, however, he also recognizes that his concerns are not wholly shared. The proximate temporal restoration of the wrong-doer to society and the ultimate eternal healing of their soul for eschatological

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his authority [*potestatem*], of his duty [*necessitatem*].” *Sermones* 302.16, from *The Works of St. Augustine* Vol. III/8, trans. Edmund Hill, ed. John E. Rotelle, Electronic Edition (Charlottesville: InteLex, 2001).

<sup>5</sup> E.g. “We call Christian rulers happy if they rule with justice...if they are slow to punish, but ready to pardon; if they take vengeance on wrong because of the necessity to direct and protect the state [*pro necessitate regendae tuendaeque rei publicae*], and not to satisfy their personal animosity; if they grant pardon not to allow impunity to wrong-doing but in the hope of amendment [*correctionis*] of the wrong-doer; if, when they are obliged to take severe decisions, as must often happen, they compensate this with the gentleness of their mercy [*misericaordiae lenitate*] and the generosity of their benefits [*beneficiorum largitate*].” *civ. dei*. V.24.

<sup>6</sup> See *De moribus ecclesiae catholicae* I.15.25.

<sup>7</sup> See *ep.* 95.3. All translations of Augustine’s letters from *Political Writings*, ed. E.M. Atkins and R.J. Dodaro (New York: Cambridge University Press, 2001).

restoration to God and the communion of saints are connected yet distinct enough in Augustine's thought to allow a shared goal of earthly peace. My task in this paper is to trace both the resonant convergence between Augustine and restorative justice in terms of the emphasis on healing and the restoration of relationship alongside the distinctions that separate them along ecclesial and eschatological lines.

### I. On Discipline

A dominant theme in Augustine's intercessory letters is the plea to refrain from retaliatory punishment. Discipline, he claims, "should always be done without hating the person, without returning him evil for evil, without a burning desire to harm him."<sup>8</sup> Rather, discipline must consider two things: restraining evil action and reforming the sinner. He concedes that the second aim cannot be accomplished by the judge. Only the sinner may undertake the repentant reformatory task of healing, by the grace of God. But even the first aim of discipline – restraining evil action – is still a form of medicine by which a person may be made better.<sup>9</sup> Furthermore, in administering punishments one should consider the interests of the wrong-doer and so far as possible aim to aid them toward the right path.<sup>10</sup> Augustine thus opposes retaliatory punishment to healing<sup>11</sup> and advocates for merciful gentleness, but at the same time he does not want "to prevent the suppression of a villain's freedom to offend,"<sup>12</sup> a more modest aim.

In his exchange with Nectarius, who hesitates to impose any punitive measures at all in the case at hand (a violent riot at Calama in which a church is burned and a Christian killed),

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<sup>8</sup> *ep.* 104.8.

<sup>9</sup> "For it would be possible for someone to show extreme hostility to a person he strongly dislikes, by neglecting to set him on the right path [*emendationem*]. Alternatively, he might impose some painful restraint upon someone he loves greatly and thus make him a better person." *ep.* 104.8.

<sup>10</sup> "On the other hand, [pardoning someone's sin] should be done without failing to consult his interests, to look ahead, and to restrain him from evil [*compescat malis*]." *ep.* 104.8.

<sup>11</sup> "Do not indulge a thirst to revenge the horrors inflicted by sinners, but rather apply a willingness to heal the wounds of sinners [*uulneribus curandi*]." *ep.* 133.2.

<sup>12</sup> *ep.* 133.1.

Augustine urges him to exert some corrective measures so as to diminish the wrong-doers capacity for evil: to take away the “means with which to live badly.”<sup>13</sup> This is an argument in favor of suppressing the “freedom to offend.” He also, however, sees this as a form of surgery: “Why are you afraid of wielding a scalpel to their audacious behaviour? Otherwise it will be nourished and strengthened by your leniency which is so destructive [*impunitate perniciosam*].”<sup>14</sup> Leniency in this case is not merciful, Augustine claims. Failure to apply punitive and corrective measures allows these wrong-doers to act unchecked; this is destructive not only to their potential future victims but to themselves. Punishment suppresses their ability to commit wrongdoing but also corrects their audacity. It communicates that they have indeed done wrong and it holds them accountable for this wrong-doing.

Perhaps because Nectarius (unlike some of Augustine’s other interlocutors) is reticent to apply any disciplinary measures, Augustine seems to make the medical argument in order to soften his argument for administering punishment. He claims, “I am not calling for a penalty, but protecting them from incurring a penalty.”<sup>15</sup> This is a rather slippery claim, for he *is* calling for a penalty (heavy fines), albeit one that he considers will protect against further and more severe penalties both civil and spiritual. He makes a similar claim even more forcefully in his letter 133 to Marcellinus: “It is true that it is also described as condemnation [*damnatio*]; but surely everyone realizes that it should be called a kindness [*beneficium*] and not punishment [*supplicium*] when you refuse to give reckless violence its freedom, without withdrawing the medicine of repentance [*paenitendi medicina*].”<sup>16</sup> This argument reflects the degree to which he associates discipline with healing, whether it be leniency or punishment. Discipline serves as a

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<sup>13</sup> *ep.* 104.5.

<sup>14</sup> *ep.* 104.5.

<sup>15</sup> *ep.* 104.6; *non est hoc inrogare supplicium sed ab excipiendo supplicio communire.*

<sup>16</sup> *ep.* 133.1.

restraint upon wrongdoing but also as a medicinal corrective and an encouragement to more full-fledged healing and reform. Punitive disciplinary measures administered correctly – that is, toward healing – are a “kindness” insofar as they (are meant to) make the wrong-doer better.

By contrast to his correspondence with Nectarius on the value of punishment, Augustine’s correspondence with Macedonius concerns the value of merciful leniency.<sup>17</sup> In response to Macedonius’s skepticism regarding merciful intercession, Augustine emphasizes the duty of love and mercy exemplified by Christ (as for example in the case of the stoning of the adulteress). He also invokes the necessity of seeking the reform of sinners in this life lest they be lost in the next. He portrays a reciprocal relationship between strictness and gentleness: “For both chastisement and pardon [*plectendo et ignoscendo*] have a place in the successful reform of human life [*uita hominum corrigatur*].”<sup>18</sup> Punishment and mercy each have their role; the one does not invalidate the other. Furthermore, this tension is not incompatible with the law.

However, there is certainly much value in restraining human foolhardiness by the threat of law [*metu legum humana*], both so that the innocent can live in security among the unscrupulous, and also for the unscrupulous themselves, that as long as fear of punishment might limit their opportunities [*formidato supplicio frenatur facultas*], then appeals to God might heal their wills [*sanetur uoluntas*]. However, the bishops’ practice of intercession does not contradict this ordering of human affairs. Far from it... The more just it is to punish sinners, the more welcome are the favours bestowed by those who intercede for them or spare them.<sup>19</sup>

The restraint of the law thus accomplishes three things. It safeguards the innocent; it constrains the commission of at least certain sins; and it contributes to an environment in which the more

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<sup>17</sup> As Dodaro notes, this exchange of letters between Augustine and Macedonius “begins with a request by Augustine to Macedonius for clemency on behalf of an individual facing the death penalty. In his initial reply, Macedonius, who is a Christian, expresses puzzlement that bishops in general consider it a religious duty to intercede for clemency on behalf of persons facing the death penalty.” Macedonius is concerned that mercy “can easily be mistaken for leniency, thereby compromising justice.” See *ep.* 152.2-3. Robert Dodaro, *Christ and the Just Society in the Thought of Augustine* (Cambridge: Cambridge, 2004), p. 206. Augustine thus responds to Macedonius explaining the value of merciful intercession.

<sup>18</sup> *ep.* 153.19.

<sup>19</sup> *ep.* 153.16.

holistic healing of the sinner (requiring not only fear of punishment but desire for divine justice) may take place. Neither lawful punishment nor intercession for reprieve from the full application of the law is incompatible with justice. There is at work a certain distinction, as well as possible cooperation, between law and justice. Augustine clearly sees these acts of leniency as compatible with justice even if offering such leniency means wrong-doers are not punished in full accordance with the law. But law, insofar as it keeps a peaceful order in society, may also enforce the just constraint and correction of wrong-doers in accordance with the loving discipline Augustine advocates. Augustine therefore sees this sort of restorative discipline both operating in cooperation with and in distinction from the law.

There are three central elements at play in Augustine's thought on response to wrongdoing, which may all advance the healing reform of the wrong-doer: the constraint of evil, corrective punishment, and merciful leniency. These elements share a certain compatibility and may all serve the ultimate aim of healing, but they are also distinct. For example, the constraint of the "freedom to offend" and the corrective punishment of offenses may indeed contribute to the wrong-doer's reform, either in themselves by protecting the wrong-doer from committing a grave moral sin or even further by prompting a more holistic movement towards spiritual repentance. In the absence of such reform, however, constraint and correction may be simply required by law to preserve the peace and order of civil society for the sake of innocents. On the other hand, Augustine argues repeatedly in favor of intercessions of mercy and pleas for leniency as gestures of Christian love and gentleness which belong both to Christian duty in itself (as modeled by Christ) and to the aim of healing reform. He clearly associates the healing of the sinner with this sort of loving mercy *as well as* constraint and correction. Or perhaps more accurately, he thinks that love may require leniency and constraint or correction.



Augustine does not offer any kind of “rule” for how love is to discern when punishment or intercession is due. Right response to wrong-doing – which is restorative – cannot be determined in advance according to an objective or schematic system of crime and punishment. Rather, it must be achieved through a process of discernment and reasoning. Augustine thus simply offers examples of such discernment and reasoning. Augustine also constitutes such an example himself in his varying epistolary recommendations regarding the administration of justice. Administering justice does not merely involve determining the just punishment for the crime in terms of the length or severity that corresponds to the act. Administering justice involves discerning the nature of the violation in terms of the needs of the wrong-doers and the community impacted, as well as the path that will best encourage movement toward healing and reform. Evidently in the differing cases that occasion his letters, he judges different responses and remedies to be just in this more holistic sense. Just as he argues it is not mercy but cruelty *not* to punish a child who plays with poisonous snakes, so it may be necessary to punish a wrong-doer who commits a toxic sin.<sup>20</sup> On the other hand, just as Christ intercedes on behalf of the adulteress to spare her the lawful punishment for her crime, so Christians are called to intercede on behalf of others: “In short, the Lord himself interceded with the men to save the adulteress from stoning, and by doing so he advocated the duty of intercession to us.”<sup>21</sup>

I call this Augustine’s “restorative reasoning.” Loving response to wrong-doing is not parsed according to certain acts *per se* but according to the appropriate acts in relation to the particular wrong-doer and the wrong-doing in question. In all cases, however, love aims at the bettering of the wrong-doer: “we ought to love the bad precisely so that they will not be bad, just

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<sup>20</sup> *ep.* 153.17.

<sup>21</sup> *ep.* 153.11.

as we love the sick not so they remain sick, but so they will be cured [*ut sanentur*].”<sup>22</sup> The task of love, then, is to discern what acts of love are due. This includes discerning the course one thinks might lead to such a cure. This is a demanding position. With love and not merely law as the guide of discipline, the execution of response to wrong-doing is a much more complex endeavor – as evidenced in Augustine’s own letters, which vary in their recommendations, and by his own reflections on the difficulty of the task.<sup>23</sup> Does this constitute a troubling means-end reasoning in which the aims of love justify the use of any apparent means toward healing? Are there any checks on the measures to which one might appeal in this endeavor? And how does this healing of the wrong-doer take place – what actions does such an aim demand of the one who undertakes this higher aim? I will proceed first to discuss the first two questions, and then the third.

Augustine’s reasoning is indeed a kind of means-end logic: the end is to love justly. This includes seeking to restore wrong-doers to health. The means – whether gentleness or punishment – may differ depending on what the administrator of discipline deems conducive to this end. But this does not render it, for that reason, a reasoning according to which the end justifies *any* means. For Augustine, there must be a continuity between the means and the end: a corrupt means is incompatible with a just end, just as any response to wrong-doing administered corruptly will corrupt the end of justice. But these are slightly different statements: the first

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<sup>22</sup> *ep.* 153.14.

<sup>23</sup> He expresses the fumbling, uncertain, and fear-inspiring nature of the task most poignantly in a letter to Paulinus and Therasia: “On the subject of punishing or refraining from punishment, what am I to say? It is our desire that when we decide whether or not to punish people, in either case it should contribute wholly to their [health] [Latin: *salutem*]. These are indeed deep and obscure matters: what limit ought to be set to punishment with regard to both the nature and extent of the guilt, and also the strength of spirit the wrongdoers possess? What ought each one to suffer? What ought he to avoid, not just in case he doesn’t progress, but even in case he regresses? Again, I don’t know whether more people are reformed than slip into worse ways through fear of impending punishment (when they fear it coming from human beings, that is). What do we do when, as often happens, punishing someone will lead to his destruction, but leaving him unpunished will lead to someone else being destroyed? In all this I confess my sins and my ignorance every day....How all this makes us tremble, my dear Paulinus, holy man of God! What trembling, what darkness!” *ep.* 95.3.

regards the nature of the means (if it is corrupt, so too will be the end), and the second regards the nature of its administration (if it is done corruptly, it will corrupt the end). Both of these claims stand for Augustine. But they are distinct considerations. The administration of justice regards the subject (the judge) and the object (the judgment). The judge must determine a just judgment and administer it justly. Both the judgment and its administration must be oriented toward addressing the healing of the one upon whom judgment is passed and the wrong-doing the judgment addresses, which in turn requires consideration of its context within the community. In other words, both i) the judge's acts and ii) the judge's intents must be ordered toward the just and loving end of healing the wrong-doer and the wrong-doing committed.

The second claim, regarding intent and administration, is clearer than the first from what has already been discussed. The same action – leniency – may be done either lovingly or cruelly, depending on the context and the intent of the action: “The spirit in which one person spares another makes a great difference. Sometimes indeed it is mercy that prompts punishment, and cruelty that prompts leniency.”<sup>24</sup> Leniency, if done out of cruelty or laxity, leads not to the loving restoration of the sinner but to their destruction. Augustine frequently uses the example of the father's discipline of his son towards this example: failure to correct his son when he does something dangerous or wrong will either endanger him or lead him to grow up sinful, thus destroying his character. Either way, the father does the son wrong. The misuse of leniency (just as of punishment) may lead to destruction.

The first claim – that a corrupt means is incompatible with a just end – is a more ambiguous and difficult claim to make about Augustine, for his emphasis is so firmly focused on the intent of an action (specifically, in the case of discipline, toward remedy). Intent plays a

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<sup>24</sup> *ep.* 153.17.

significant role in defining the nature of action as cruel or merciful. Augustine defends this as the defining criteria for undertaking an action, even if the consequences of an action are different from the intended result.

I do not believe that such evil consequences [of intercession] ought to be taken into consideration by us when we intercede with you, but only the good effects [*illa bona*] which are the aim and object of our action: setting an example of gentleness in order to win love for the word of truth; and enabling those who are freed from temporary death to live so as to avoid everlasting death (from which they will never be freed).<sup>25</sup>

Augustine strikingly rejects the consideration of possible evil consequences in the deliberation about one's response. Only the aims of love and liberation guide the discernment of discipline. But nevertheless, this does not lead to the conclusion that an evil means may be justified by intent to bring about a good end. Evil means and good ends are incompatible.

I draw on *De mendacio* to illustrate the point. In this text on lying, Augustine puts the question about means and ends bluntly: is a lie permissible if it is done to save a life? His answer is no, for a lie is an iniquity and it kills the soul; one ought to fear bodily death less than spiritual death. It is perverse to claim that one should incur spiritual death in order to save one from bodily death. The purity of the body and the purity of the mind stand together, Augustine claims. One cannot tell a lie in order to safeguard the purity of the body without in fact undermining that end, for that corruption will taint the purity of the body. Similarly, one may not commit any sin knowingly in order to secure some apparently good end. The central question regarding the permissibility of lying, Augustine says, is whether a lie is an iniquity.<sup>26</sup> If it is, the matter is settled: it cannot be "used" even for a desirable end, for no end is more desirable than eternal life. There are limits on the actions that may be pursued toward a good end.

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<sup>25</sup> *ep.* 153.18.

<sup>26</sup> *mend.* 9 from *The Fathers of the Church* 16 trans. Sister Mary Sarah Muldowney, ed. Roy J. Deferrari (New York: 1952).

In the subject at hand regarding the healing of wrong-doers, the same argument applies: What sense does it make, if in order to secure the eternal life of another (their spiritual reform and healing) one sickens oneself, perhaps thereby undermining one's own salvation? Thus it is clear that for Augustine the end does not justify the means such that considerations of the nature of means in themselves become entirely relative. The action taken toward the aim of just restoration must cohere with that end; it cannot be unjust in itself.

It is possible, of course, for a person to be mistaken about the nature of their means. But doing evil, whether out of ignorance, out of a rationalized logic, or out of a malicious intent, does not excuse wrong-doing, though it will make some difference in the judgment of the severity of the wrong.<sup>27</sup> In other words, there is a distinction between the potential evil consequences of an action that authentically aims at good but is foiled by the vicissitudes of circumstances beyond the actor's control, and the evil consequences of an action that *is* evil even if the actor claims to aim in some (necessarily mistaken) way at good. The key distinction in the second instance is that the aiming at the good is necessarily mistaken; for someone to undertake an evil action "for good" that "good" must be flawed somehow, either by ignorance, false logic, or simply deceit (in which case the "good" aimed at is a deliberate falsehood).

This implies that for Augustine there must be certain checks upon the nature of actions that may be undertaken toward the end of healing sinners, though he does not delineate these concretely. Iniquities – whatever he might consider these to be in the context of criminal justice – may not be committed with the aim of reforming the sinner. This is significant for appropriating Augustine's framework, if not all the specificities of his opinions on just

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<sup>27</sup> *mend.* 3.

discipline.<sup>28</sup> Within Augustine's framework iniquities are not legitimate or justifiable means even towards supposedly good ends. Within the scope of permissible actions intent defines the moral quality of the action – whether punitive or merciful – as just and loving or lax and cruel.

This is consistent with my claim about Augustine's understanding of loving discipline as requiring "restorative reasoning." Restoration is not accomplished according to an objective set of rules, but must be undertaken through a process of discernment. This discernment is not entirely open-ended in that iniquities may be justified according to this reasoning. Nevertheless, even the bounds of permissible action require discursive demonstration. Augustine does not simply proclaim lying to be an iniquity but conducts a reasoned argument for why it is; he demonstrates this sort of discursive discernment of justice and its limits. This gives the reader a warrant for conducting the same sort of discursive reasoning regarding the content of Augustine's conclusions regarding the bounds or appropriate limits for just disciplinary means. It also provides the reader with a model for conducting such reasoning regarding the current practices of the contemporary justice system (as I will regarding solitary confinement) as well as the particular path of addressing a wrong-doer and their wrong-doing in context. Such restorative reasoning emerges from and corresponds to a socially-rooted attentiveness to forming healing relationships with the power to transform both parties involved. Augustine's model of morally formative fellowship thus provides the active complement to his restorative reasoning about justice.

## II. Formative Fellowship

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<sup>28</sup> For example, Augustine frequently uses the example of a father's beating of his child as a loving corrective to illustrate how the absence of correction may be cruel. We might approve the reflection that leniency may be cruel and punishment may be loving without approving the beating of children as a legitimate disciplinary tool. In other words, the contemporary disciplinary toolbox may have distinct contents from Augustine's, but the guiding framework for understanding its proper use may still offer relevant insights.

Now to consider how it is that the healing of wrong-doers is actually undertaken, beyond the initial question of whether to administer punitive correction or merciful leniency. For Augustine, the central feature in the healing of wrong-doers is fellowship: fellowship with sinners seeking fellowship with God. Of course, for Augustine fellowship with God in Christ is essential to the ultimate purification and redemption of the sinner.<sup>29</sup> In this regard, his soteriology and eschatology pervade his understanding of healing, moral formation, and the fellowship by which it is accomplished. I will discuss the implications of Augustine's eschatological orientation for his understanding of earthly and civil action towards restorative justice in the final section (Section IV: Earthly and Eschatological Aims). But my focus in this section is on Augustine's description of how fellowship amongst human beings on earth has a formative quality that may foster a movement toward the healing. Certainly for Augustine, the *salvific* fellowship that restores a wrong-doer unto righteousness must draw the wrong-doer in to the fellowship of the church. But the initial fellowship upon which basis a wrong-doer might be so drawn is simply the fellowship amongst human neighbors, the love that one extends to another and thus binds them in relationship. Augustine thinks that believers must extend such love to all human beings, for all human beings are earthly neighbors and additionally one does not know which will be heavenly neighbors as well.<sup>30</sup> Love has a formative and transformative power, therefore Augustine instructs his readers to "Love your enemies in such a way that you wish them to be brothers; love your enemies in such a way that they are brought into your

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<sup>29</sup> "Those who become good do so by God's spirit; our nature is created with the potential to receive it, through its own will. In order for us to be good, we have to receive it and possess what is given us by God, whose goodness depends on himself..." *ep.* 153.12.

<sup>30</sup> *en. Ps.* 25.2.2 from *The Works of Saint Augustine* Vol.III/15, trans. Maria Boulding, ed. John E. Rotelle, Electronic Edition (Charlottesville: InteLex Corporation, 2001).

fellowship.”<sup>31</sup> This model of fellowship as formative and restorative offers resources for considering contemporary approaches to both disciplinary and rehabilitative measures, a point I will develop in Section III.

For Augustine, taking action on behalf of a wrong-doer creates fellowship: “Therefore if you take action against the crime in order to liberate the human being, you bind yourself to him in a fellowship of humanity [*humanitatis societate deuinctus*] rather than injustice.”<sup>32</sup> All are sinners; merciful intercession is eminently demonstrative of this for it implicitly acknowledges one’s own sinfulness. “Who among thee is without sin?” Christ asks, when he intercedes on behalf of the adulteress.<sup>33</sup> Human intercession on behalf of others “does not bind us in fellowship with them in their crimes. We intercede even for villains, if not as villains ourselves, still as sinners acting on behalf of sinners, and also, I think – please take this as truthful rather than insulting – with those who are sinners themselves.”<sup>34</sup> Thus intercession is an act that “sinners [do] for each other on their own behalf. As scripture says: *Confess your sins to one another, and pray for yourselves* [Jas. 5.16].”<sup>35</sup> This kind of fellowship amongst sinners – not in crime but in fallen humanity – is a source of compassion and mutual support. Intercession, confession, and prayer are connected for Augustine because in a sense they all acknowledge the pervasive sinfulness of human life on earth and yet seek healing within it. Confession and prayer are practices that surrender sin unto another and to God. These are practices that reflect and create a fellowship of trust and faith. This context is critical for healing.<sup>36</sup>

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<sup>31</sup> *ep. Io. tr. 1.9* from *The Works of Saint Augustine* Vol. I/14, trans. Boniface Ramsey, ed. Daniel E. Doyle and Thomas Martin, Electronic Edition (Charlottesville: IntelLex Corporation, 2001).

<sup>32</sup> *ep. 153.3*.

<sup>33</sup> John 8:2-11.

<sup>34</sup> *ep. 153.15*.

<sup>35</sup> *ep. 153.10*.

<sup>36</sup> This is also I think critical to any understanding of a victim-offender mediation or reconciliation that might be resourced from Augustine, though a consideration of this is beyond the scope of this article.



Within this fellowship of humanity marked by practices of intercession, confession, and prayer, the restorative formation of a sinner may occur. For Augustine, imitation is a critical component of this formation. First, one must be exposed to goodness, to see it done; then, one must come to desire it for oneself. Augustine writes that “all good works love to be set in the light, not for the sake of human glory, but (as the Lord says) *so that they may see your good works and glorify your father who is in heaven*. That is why it was not enough for the apostle to warn us to preserve gentleness [*mansuetudinem*]; we were also to make this known to everyone.”<sup>37</sup> Gentleness and good works should be made known and “set in the light.” This is not only because such works glorify God but because they have an impact upon those who see them. For this reason, he says, there are leaders within the body of Christ “by whose authority believers are cut clean away from the error of the heathen and of a whole range of heterodox opinions, and are brought over into that society which is Christ’s body.”<sup>38</sup> These leaders “are the people who teach correctly and live in accordance with what they teach, the people who do what scripture says, *Let your deeds shine before men and women in such a way that they bless your Father who is in heaven* (Mt 5:16).” Like the good works that must be “set in the light” these leaders let their “deeds shine before men and women.” By letting their deeds shine, “The integrity of these people makes a profound impact on others, who believe in the God who speaks and works through them. They separate themselves from the world to which they were once conformed and cross over to join the members of the Church.”<sup>39</sup> Augustine observes that the integrity of some may inspire others – but in order to do so it must draw them to desire their fellowship.

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<sup>37</sup> *ep.* 133.2.

<sup>38</sup> *en. Ps.* 3.7.

<sup>39</sup> *en. Ps.* 3.7.

This possibility of inspiration is simply a feature of human sociality and the influence that people wield upon one another:

People talk to each other and catch fire with enthusiasm, and all the separate flames unite into a single flame. This one flame that springs up from the conversation of many people who enkindle one another seizes them all and sweeps them along to the holy place.<sup>40</sup>

Human interests, desires, enthusiasms are contagious – they inspire response in others. This works in both directions, as Augustine well knows. This sort of social contagion may spread vicious as well as virtuous desires. Take his example from *Confessiones* of his friend Alypius being swept along by his companions to the gladiatorial arena. Though Alypius goes insisting he will keep his eyes shut, he is nevertheless unable to resist the great roar of the crowd in response to the games and develops an obsession with such spectacles.<sup>41</sup> This phenomenon of social contagion has implications for considering the structure of a response to wrong-doing that seeks the restoration of the wrong-doer. Just as good forms of fellowship aid in this aim so too bad forms of fellowship hinder this aim. The risk of social contagion also however poses challenges to creating constructively formative fellowship. As I shall discuss in the example of CoSA, volunteers working with high-risk sex offenders require resources and support in order to accomplish their aims. Morally formative relationships therefore must have a grounding that enables those that seek to restore a wrong-doer to resist the possible temptations that the relationship with the wrong-doer may yield to them. Articulating this possibility must be done carefully however; the imagery of contagion risks fuelling fearful and isolating responses to wrong-doers rather than supportive and compassionate ones. Indeed, it is precisely the concern about such social contagion that fuels the use of solitary confinement of prisoners as a

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<sup>40</sup> *en. Ps.* 121.2.

<sup>41</sup> *conf.* VI.viii.13.

penitentiary tool. The corrective, however, to bad forms of fellowship is not isolation (which simply incapacitates the prisoner for social fellowship) but good forms of fellowship.

Thus it is important for Augustine that sinners and wrong-doers experience the beneficence of good works, that they are inspired by the enthusiasm of rightly-ordered desire, and that they have exemplars. Human beings are mimetic creatures – but the point about exemplariness is not simply that wrong-doers need a copy upon which to model themselves but that they need a relationship with another. The “catching fire” that may take place amongst human beings is a function of shared social life; it is a response to conversation, mutual presence, and common activity. Indeed, an example of goodness will be of little use to a wrong-doer whose desires are disordered and thus does not desire goodness. A copy or a model for imitation is only beneficial once a certain desire or enthusiasm has already been kindled.

The kindling of desire is rooted in attraction. People catch fire from one another because they are drawn to the other. Thus there must be a shared social context, there must be a spirit of enthusiasm – a flame – present that may then attract people to it. Augustine describes this as an attraction to a party:

Yet it was while he marveled at the members of that company in the tent that he was led to God’s house. He was drawn toward a kind of sweetness [*dulcedinem*], an inward, secret pleasure [*interiorem...et occultam uoluptatem*] that cannot be described, as though some musical instrument were sounding delightfully from God’s house. As he still walked about in the tent he could hear this inner music; he was drawn to its sweet tones, following its melodies and distancing himself from the din of flesh and blood, until he found his way even to the house of God... When people celebrate in this world with their various forms of indulgence, they usually set up musical instruments outside their houses, or assemble singers there, or provide some kind of music which enhances the pleasure of the guests and entices them to immoderate behavior. If we are passing by and happen to hear it, we say, “What’s going on?” And they tell us that it’s some kind of party. “It’s a birthday party,” they say, or “There’s a wedding reception.” ...In God’s home there is an everlasting party...From that eternal, unfading festival melodious and delightful sound reaches the ears of the heart, but only if the world’s din does not

drown it. The sweet strains of that celebration are wafted into the ears of one who walks in the tent and ponders the wonderful works of God in the redemption of believers, and they drag the deer toward the springs of water.<sup>42</sup>

It may be a sensual pleasure that entices the passerby – the sound of music – but the sound of celebration itself also attracts. The “festival melodious and delightful sound” of the “everlasting party” may lead one to want to know what’s happening and perhaps elicit a desire to join in. This desire is inspired by the delight suggested by the celebration; God’s party is joyous! For Augustine, then, the beginning of formation and of healing lies in *attraction to delight*. There must be something appealing about this fellowship that one might desire to join it.

But this fellowship is not only one of celebration and festivity. It is also founded on bearing one another’s burdens. It is also a practice of toil, of sacrifice, and of solidarity in suffering. This too may be appealing and attractive to the passerby, albeit in a different kind of way. Both forms of attraction are relevant and may appeal to passers-by in varying circumstances. Thus for Augustine, the fellowship into which he seeks to draw others in love is not only a delightful joyous one but a compassionate one:

The law of Christ is love [*caritas*], and love is not fulfilled except we bear one another’s burdens. “Bearing”, [*sufferentes*] [the apostle] says, “one another in love [*dilectione*], desiring to protect the unity of the Spirit in the bond of peace.” When you were weak, your neighbor carried you; you are healthy [*sanus*], bear your neighbor.”<sup>43</sup>

This reciprocal bearing of burdens for Augustine involves not only lending aid and sharing resources but also forgiving others:

Suppose someone has injured you and asks pardon: if you do not forgive that person [*si non dimittis*], you are not carrying the burden [*onus*] of your brother or sister; but if you do forgive, you are carrying your weak companion. Then if it

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<sup>42</sup> *en. Ps.* 41.9.

<sup>43</sup> *Io. eu. tr.* 17.9. My translation.

happens that you yourself, weak human that you are, fall into some infirmity, it will be your neighbor's turn to carry you, as you did him.<sup>44</sup>

As this passage makes clear, part of the task of fellowship and of burden-sharing is to carry a weak, sick neighbor – to aid them in their illness and to seek their healing. Part of this healing is to offer forgiveness.<sup>45</sup> Confession, prayer, and forgiveness are thus central practices that address wounding, weakness, and sickness. Delight, enthusiasm, and celebration are practices that attract the passer-by who may be otherwise drawn to the din of worldly revelry.

It is clear that for Augustine the practices that intercede in the life of the wrong-doer in order to create fellowship are particularly reparative. While restraint and lawful correction may serve the aims of healing in their limited ways, intercession and fellowship are more substantively restorative practices. The practices of fellowship are demonstrative and imitative (letting good deeds shine that they may be made known), celebratory (to share enthusiasm, to catch one another's flames), and intercessory (to confess, to pray, to forgive). All of these contribute to the formative restoration to health of the wrong-doer. From this brief treatment it is evident that human relationships are central to the process of healing. In order to seek the restoration of the wrong-doer unto health, one must befriend them; one must bind oneself to them in a fellowship of love. In its direct response to a crime, this love may require punishment or leniency, but in either case it requires a demonstration of love and the formation of a relationship within which the wrong-doer may then have the opportunity for movement towards reform.

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<sup>44</sup> *en. Ps.* 129.4

<sup>45</sup> Here too would be an opening for a rich but complicated discussion of victim-offender dialogue and reconciliation. Suffice to say that while Augustine certainly understands forgiveness to be a feature of Christian love and restorative healing, such a discussion would require significant unpacking with regards to victim-offender relationships. Here I bracket the question of *victim*-offender relationships to discuss in more general terms the possibility of morally formative fellowship with the wrong-doer.

I turn then at last to the implications of this model for restorative justice. It should be clear that Augustine's response to wrong-doing aims at restoration: both the restoration of the wrong-doer unto health and the restoration of relationships broken by wrong-doing within a human society. How does such an account interact with contemporary concerns and the contemporary realities of the justice system?

### III. Implications for Restorative Justice

A central feature of Augustine's model as I have demonstrated is the importance of human fellowship. Social relationships – specifically, ones that encourage a better way of life – are critical to the restoration of a wrong-doer unto human community. Two points of connection to contemporary concerns follow from this perspective regarding both i) the means and ii) the administration or carrying out of just discipline. In the first place, the Augustinian perspective may speak to the destructiveness of solitary confinement as a disciplinary tool (a widespread if increasingly criticized practice in the American criminal justice system<sup>46</sup>). In the second place, it supports models of restorative justice that emphasize the creation of supportive relationships and communities around wrong-doers.

I begin with the issue of solitude and exclusion. Augustine's understanding of healing clearly problematizes approaches to wrong-doing that enforce isolation or exclusion. While he acknowledges that there may be circumstances under which certain exclusions are appropriate (such as refusing to administer the Eucharist to the unrepentant), he predominantly emphasizes the importance of fellowship even with enemies.

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<sup>46</sup> As Atul Gawande asks in his 2009 New Yorker article, "Hellhole," "If prolonged isolation is—as research and experience have confirmed for decades—so objectively horrifying, so intrinsically cruel, how did we end up with a prison system that may subject more of our own citizens to it than any other country in history has?" Atul Gawande, "Hellhole," *The New Yorker*, March 30, 2009, [http://www.newyorker.com/reporting/2009/03/30/090330fa\\_fact\\_gawande](http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande).

The early American penitentiaries were generally systems of rigid solitary confinement. This form of discipline was associated, as the name suggests, with penitence. Deviance required isolation from nefarious influences; thus solitary confinement was seen as a therapeutic and rehabilitative tool toward reform.<sup>47</sup> As was discovered, however, isolation achieved quite the opposite effect and the practice was largely abandoned by the end of the 19<sup>th</sup> century. Despite these lessons from history as well as the recent literature attesting to the ineffectual and harmful nature of solitary confinement as a punitive and correctional measure,<sup>48</sup> the use of solitary confinement in the United States has risen dramatically since the early 1970s with the advent of “control unit” prisons, also known as “supermax” prisons.

According to Craig Haney, a University of California Santa Cruz psychology professor who conducted a rare study of prisoners held in solitary confinement, “The conditions of confinement are far too severe to serve any kind of penological purpose.”<sup>49</sup> Indeed, he found that solitary confinement frequently led not only to forms of psychosis and other psychological trauma but contributed to “irrational anger,” which he found in almost ninety percent of the population he studied.<sup>50</sup> Harvard psychiatrist Stuart Grassian reports that, among other psychiatric effects, almost half the prisoners he studied experienced “primitive aggressive ruminations.” These include “fantasies of revenge, torture, and mutilation of the prison guards” as well as loss of impulse control resulting in random violence.<sup>51</sup> The psychiatric effects of

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<sup>47</sup> Stuart Grassian, “Psychiatric Effects of Solitary Confinement,” *Journal of Law and Policy* 22 (2006): 325-380, p. 340. <http://law.wustl.edu/journal/22/p325grassian.pdf>.

<sup>48</sup> In the past half-century numerous further studies, reports, and first-hand accounts have attested to the profoundly destructive effects of isolation on human beings. These effects are well documented. See Grassian, “Psychiatric Effects of Solitary Confinement” for a summary.

<sup>49</sup> Sadie Dingfelder, “Psychologist testifies on the risks of solitary confinement,” *American Psychiatric Association* 43, No. 9 (October 2012) <http://www.apa.org/monitor/2012/10/solitary.aspx>.

<sup>50</sup> Gawande, “Hellhole.”

<sup>51</sup> Grassian, “Psychiatric Effects,” 336.

confinement are consistent, distinct, dramatic, and severe, most closely resembling a delirium.<sup>52</sup>

Persons with underlying psychiatric or neurological disorders, chaotic emotional lives, poor impulse control, or a history of trauma are particularly susceptible to severe harm under conditions of isolation. Yet these are precisely those most likely to be confined in isolation; thus the cruel – and eminently destructive – counter-logic of the criminal justice system.

The destructiveness of isolation is not limited to those with such existing difficulties, however. Grassian notes that many even previously “stable” personalities will suffer permanent harm as a result of confinement, “most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and, perhaps more significantly, often severely impairs the inmate’s capacity to reintegrate into the broader community upon release from imprisonment.”<sup>53</sup> Confinement, then, is not only harmful on a fundamental level (Grassian describes it as “strikingly toxic to mental functioning”<sup>54</sup>) but it directly impedes the prisoner’s re-entry to the general prison population as well as to civil society. If the aim of solitary confinement is to restrain and subdue (let alone rehabilitate) disruptive or violent prisoners, it is largely counter-productive.

Augustine’s reflections on discipline reflect a commitment to the central role of sociality and fellowship in the rehabilitation of the wrong-doer; these cohere remarkably well with the modern research on the issue. Addressing crime with even a basic aim at rehabilitation or at minimum the prevention of escalating violence and dysfunction clearly supports the maintenance

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<sup>52</sup> Grassian, “Psychiatric Effects,” 337-38.

<sup>53</sup> Grassian, “Psychiatric Effects,” 333.

<sup>54</sup> Grassian, “Psychiatric Effects,” 354.



of social interaction in prison life. The broader aim at the restoration of a wrong-doer to healthful human community requires the formation of particular forms of reparative social interaction.

A contemporary model for such reparative fellowship aimed at addressing wrong-doing and the restoration of the wrong-doer to society may be found in the restorative justice movement. Circles of Support and Accountability (CoSA), a program based on restorative justice principles, provides an illustrative example. CoSA is a community-based initiative that forms small groups of trained volunteers to support and hold accountable high-risk sexual offenders in re-entering society. Circles provide support ranging from assistance with practical tasks like filling out job and housing applications to providing a network of emotional support. Circles meet regularly in informal non-administrative settings with the core member to develop the relationships of trust upon which the support and accountability rest. Given that high risk offenders are often “extremely socially isolated,” exacerbating the “likelihood of reoffending,” part of the aim of this social support is to model “pro-social relationships”<sup>55</sup> and to assist the core member in developing “pro-social strategies and solutions to everyday problems and concerns.”<sup>56</sup> Circles are also called to challenge the core member in rationalizing or minimizing behaviors and to celebrate successes. Such circles are, in effect, given the demanding task of enacting the loving discipline and morally formative friendship that Augustine describes.

CoSA began in Hamilton, Ontario in 1994 as a community-led response to the release of a repeat, high-risk sexual offender.<sup>57</sup> Hostile and anxious community response to the release prompted Mennonite pastor Harry Nigh to voluntarily form what came to be known as a circle of

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<sup>55</sup> Sarah Armstrong, Yulia Chistyakova, Simon Mackenzie and Margaret Malloch, “Circles of Support and Accountability: Consideration of the Feasibility of Pilots in Scotland,” Report for the *Scottish Centre for Crime and Justice Research*, May 2008, p. 5, <http://www.sccjr.ac.uk/wp-content/uploads/2012/10/circles.pdf> <http://www.sccjr.ac.uk/wp-content/uploads/2012/10/circles.pdf> hereafter cited as *SCCJR Report*.

<sup>56</sup> From the website of CoSA Ottawa; <http://cosa-ottawa.ca>

<sup>57</sup> *SCCJR Report*, p. 20.

support and accountability. CoSA has since spread across Canada, England, and the United States. Emerging evidence supports the anecdotal accounts that the circles have been remarkably helpful. The most obvious empirical data regard recidivism rates, which are 83% reduced amongst CoSA participations.<sup>58</sup> However, recidivism rates are only one small aspect a much more complex – and largely unquantifiable – approach to addressing offenses. At heart, CoSA provides fellowship to those who might otherwise be isolated or reviled. It seeks to make change both in the core member's life and in the life of the community by essentially befriending a person who might lack friends and the resources friendship offers: aid, advice, a listening ear, compassion, accountability for one's actions not in an abstract or merely formal legal sense but in a personal sense. CoSA, in other words, provides a model of and a way into a communal way of life. It seeks to re-shape the lives of wrong-doers as they re-enter society and simultaneously to re-shape the life of their community to integrate those it might otherwise simply fear and loathe. This is a model of moral formation through friendship, through the bonds of human relationship. It is a model of love, love for the marginal and love for the enemy, and it is a model that seeks to form its participants (offenders and community members) for a better life together.<sup>59</sup>

As such, CoSA is a model of the sort of Augustinian approach to loving discipline I have described above. It seeks to love the enemy to make them a friend, it calls for practicing both mercy and correction, and it seeks in so doing to restore community and form a better life. It rests upon a certain model of demonstration and imitation: circle members model and assist the

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<sup>58</sup> Robin J. Wilson, Franca Cortoni and Andrew J. McWhinnie, "Circles of Support and Accountability: A Canadian National Replication of Outcome Findings," *Sexual Abuse: A Journal of Research and Treatment* 21, no. 4 (December 2009): 412-430.

<sup>59</sup> The qualitative self-evaluations submitted by participants in an English CoSA and surveys conducted in communities in which there is a CoSA project show promising results both in terms of the benefits to core members and to community members. *SCCJR Report*, p. 75.

core member in developing “pro-social” relationships and skills. It also calls for the circle members to bear the burdens of the core member alongside them. It rests upon the foundation of attracting the core member to a new life and assisting in shaping them for that life. Insofar as many of the circles are Christian faith-based initiatives, the vision for that better life is shaped by Christ to an extent.

#### IV. Earthly and Eschatological Aims

This is not to deny that there is an important distinction between the practices of formation that restore a person to life in secular civil society and the sort of healing reform that restores a person to eternal life with God and the heavenly society of saints. Augustine’s eschatological emphasis does not translate smoothly to contemporary society in terms of envisioning the relationship between the aims of moral formation for Christian life and restorative justice within civil society. In Western secular cultures, state-sponsored programs cannot proselytize; thus a program like CoSA does not seek in any explicit way to turn the core member to God. CoSA does not (at least not directly) aim at restoring the wrong-doer to fellowship with God, which is a central aim of Augustinian moral formation and which for him is integral to the healing he desires for wrong-doers.

This need not imply, however, that no conjunction of earthly and heavenly or civil and faith-based initiatives in response to wrong-doing in human communities may exist – on either the Augustinian or the secular side of the discussion. Earthly and heavenly aims may run parallel to an extent and enable a certain “cooperation” between political society and the church.<sup>60</sup>

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<sup>60</sup> John von Heyking argues that they have a relationship of “interdependence.” John von Heyking, *Augustine and Politics as Longing in the World* (Columbia: University of Missouri Press, 2001), 210. I think he overstates the case insofar as the political city, on his account, seems to have its own independent center of value and moral authority in relation to the church. For Augustine, there is only one source of value and moral authority. At the same time, he recognizes a distinct, relative value and authority in the civil realm insofar as it is ordered to the true source of value

Members of the church are also citizens of the *polis* and they share certain proximate aims. As CoSA demonstrates, community-led faith-based initiatives (as CoSA was in its inception, and remains in Canada) may contribute to civil society's interests in maintaining peace, preventing or reducing crime, and rehabilitating offenders for life in society. Their practices of fellowship, support, and accountability – which so closely cohere with the Augustinian model of neighbor-love for wrong-doers – are not only acceptable but widely praised as a public service to civil society and an enhancement to the criminal justice system. It is perhaps telling nevertheless that such an approach originated as an alternative to a much different public response from civil society and to fill the void of support for social reintegration upon exiting the criminal justice system.<sup>61</sup> As an alternative, however, it has ultimately been enthusiastically welcomed.<sup>62</sup>

This is not necessarily problematic on Augustine's terms. Augustine names several aims of intercession. First of all, "we ought to love the bad precisely so that they will not be bad, just as we love the sick not so they remain sick, but so they will be cured."<sup>63</sup> Secondly and thirdly, the aims of intercession are: "setting an example of gentleness in order to win love for the word

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and authority. Thus von Heyking's points that political society and the church have distinct roles (to an extent), that there is a relationship between them (though I characterize it as cooperative rather than interdependent), and that the value of political society is not "merely instrumental" (as I note below, footnote 70) cohere with my argument even as I argue – in line with Robert Dodaro – that Augustine thinks that the ecclesial, heavenly aims must transform the civil and political.

<sup>61</sup> The Canadian CoSA, by contrast to for example the British which are more integrated into the criminal justice system, focus on those offenders who have been deemed too high risk for earlier release under supervision and therefore exit the prison system at the "absolute endpoint of their custodial sentence, without any supervision or support at all." *SCCJR* Report, p. 20.

<sup>62</sup> The faith-based nature of the initiative has not prevented the widespread acclaim of the program by the Correctional Service of Canada. Indeed, CoSA has been funded jointly by the Mennonite Central Committee and Canadian Correctional Services. At a Public Safety conference in response to a question about how to reduce the rate of repeat offenses, "respected human rights lawyer Lawrence Greenspon, Edmonton and Toronto police detectives Wil Tonowski and Wendy Leaver, former Ottawa Police Chief Vince Bevan, Correctional Service of Canada (CSC) staff, and others praised the CoSA program for its long track record of effectiveness." From the website for Correctional Service Canada; <http://www.csc-scc.gc.ca/text/pblct/lt-en/2006/31-3/7-eng.shtml> As the Correctional Service website notes on the information page regarding CoSA, "From these two acts, which mirrored the "radical hospitality" espoused by the Christian Gospels, sprang what has since become a world-renowned project embraced by faith and non-faith groups alike." The interests of civil society and the faith-based initiative rooted in Christian love thus coincide here to an extent.

<sup>63</sup> *ep.* 153.14.

of truth; and enabling those who are freed from temporary death to live so as to avoid everlasting death (from which they will never be freed.”<sup>64</sup> An initiative like CoSA contributes to all of these aims, albeit in ways Augustine would certainly deem incomplete. Furthermore, although Augustine’s action on behalf of wrong-doers is firmly rooted in his soteriological and eschatological beliefs, it is not restricted to those within the church. There is a place for Christian intercessions in the affairs of civil society and the judiciary criminal justice system,<sup>65</sup> so long as believers do not capitulate their identities to potentially compromising influences.

Here I must pause to acknowledge that there are in fact three “spheres” at play in this discussion of the Augustinian convergence with restorative justice. There is the sphere of the judiciary and criminal justice system administered by the state, there is civil society, and there is the ecclesial community. The restorative justice movement (which I will reiterate enfolds a broad array of initiatives) may or may not involve itself in the judiciary and criminal justice system directly. Its primary concern – as opposed to the retributive justice model – is with wrongs committed and reparations made in the context of civil society. Restorative justice focuses on the people and the relationships at stake. Retributive justice, by contrast, considers acts and laws. Augustine considers the ecclesial body to have a role in interacting on both of these levels. He assumes a framework of justice that operates on a judiciary state-administered level. He also assumes that the administration of justice by the state has important ramifications for civil society and the ecclesial community. He assumes, indeed, that all of these spheres are to a certain extent interconnected in the temporal realm. Thus as an ecclesial authority he seeks to intercede

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<sup>64</sup> *ep.* 153.18.

<sup>65</sup> As exemplified in Augustine’s letters to Nectarius. Though the occasion prompting the correspondence regards pagan-Christian conflict, the subject of their letters is the administration of judicial penalties for the pagans and appropriate discipline in the civil realm for their actions. Augustine articulates his position according to both an “earthly” and a “heavenly” logic. He does not hesitate to discuss sin, virtue, and salvation but he also appeals to the practical aims of the earthly city at a law-abiding peace – leniency, he argues, will not achieve the effect of restraining further violence.

in both judicial and civil spheres. This intercession may be confrontational as when he seeks to alter or temper the administration of justice, or it may be cooperative in that he observes common interests and aims (in maintaining an earthly peace, for example) to which both parties may contribute. I have largely focused my efforts here on describing how an Augustinian model of restorative discipline and formative fellowship may converge or cooperate with the aims and interests of restorative justice. The discussion of Augustine, law, and the judicial or criminal justice system at greater length awaits another paper. Questions remain as to how to conceive of the cooperation possible between Augustine's aims, given their eschatological cast, and the aims of restorative justice, which primarily concern civil society.<sup>66</sup>

Restoring a wrong-doer to the human earthly community in the manner of CoSA is not at odds with the possibility of restoring them to the heavenly community (indeed it may be integral to such a possibility), should they desire such restoration. For Augustine, the temporal and proximate restoration of the wrong-doer to human earthly community is ordered to their eternal and ultimate restoration to the heavenly community.<sup>67</sup> This does not, however, diminish the

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<sup>66</sup> It is too simple to frame this in terms of a straight contrast – as the CoSA example demonstrates – for many of the restorative justice initiatives are indeed faith-based and may well share Augustine's eschatological aims. Nevertheless, I consider that in general the restorative justice movement is not a missionary movement: it aims to intercede in the administration of justice in civil society. Even if those intercessions may be rooted in faith commitments, this is distinct from Augustine's intercessions, which draw explicitly on his ecclesial authority and his soteriological, eschatological aims in making his arguments regarding the administration of justice in judiciary and civil realms.

<sup>67</sup> As Dodaro remarks, Augustine "suggests that the conception of the civic virtues which [Christian statesmen] practise in the earthly city should undergo change as a result of their anticipation of the fulfilment of these same virtues in the heavenly city." Dodaro, *Just Society*, 206. Indeed, the "heavenly virtues" of faith and hope "transform the way in which civic virtues like fortitude and justice are understood in the earthly city." Dodaro, *Just Society*, 208. This does not imply a "takeover" of the civil realm by the ecclesial such that ecclesial aims supplant civil ones – but it does imply that pursuing civil and earthly aims from an ecclesial and heavenly-ordered perspective has a real influence on the nature and manner of the pursuit. The heavenly citizen, by ordering their earthly aims in relation to their heavenly end, elevates those earthly aims and transforms the manner of their pursuit (by tempering discipline with mercy, justice with love, and so on). Thus earthly citizens and heavenly citizens will conceive of and pursue proximate political aims from different vantages. There are both shared and un-shared elements in their pursuit of proximate political aims. This is not simply a matter of "adding" heavenly aims to earthly ones. Heavenly aims are not merely additional to a complete set of proximate aims that stand alone as good in themselves. The only good in itself, according to the heavenly vantage, is God. Neither, however, do ecclesial aims exhaust civil ones. There is a

relative value of that temporal and proximate restoration – but it remains to be determined just how valuable such a restoration is if its scope is limited to earthly-civil rather than heavenly-ecclesial spheres. For Augustine, of course, if the restoration of the wrong-doer is *merely* temporal, its value is significantly curtailed by the prospect of eternal death. Nevertheless, he recognizes that there may be shared aims in the temporal realm between civil and ecclesial bodies that are worth pursuing in a cooperative manner, even if their aims are not identical insofar as they are oriented toward distinct ends.<sup>68</sup>

How is the earthly citizen's cooperation to be conceived in this picture? It is clear that the heavenly citizen pursues proximate earthly ends from the transformative vantage of their final end. It is clear that some of these proximate aims will be shared with the earthly citizen. But what is the nature of the earthly citizen's participation in those shared aims? Do they in fact cooperate in pursuing transformed proximate aims, on some level? Or do they cooperate in pursuing merely those shared elements of the proximate aim that pertain to the mortal temporal condition? Can those proximate aims pertaining to the mortal temporal condition be isolated from their transformation by the heavenly end if earthly and heavenly citizens pursue them cooperatively?

Augustine describes a cooperation between earthly and heavenly citizens in maintaining an *earthly peace*, which the earthly city and the heavenly city both “use,” and the healing love that Christians extend in anticipation of a *heavenly peace*. For Augustine, just as the domestic

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genuine but relative goodness in the proximate aims of civil realm, however, it is at best incomplete and at worst warped when pursued as if it were final or in relation to the wrong final end. Thus an element of the heavenly citizen's participation in the pursuit of proximate earthly aims entails that they pursue those aims in accordance with the transformation implied by the final heavenly end.

<sup>68</sup> Just as the transformation of civic virtue by the anticipation of its heavenly fulfillment does not imply a “takeover” of the earthly political realm by the church, neither does it imply a separation of the ecclesial body from civil society so radical that cooperation along certain shared interests or aims is impossible or inconceivable. It does imply that a believer cannot divorce their civil and ecclesial, earthly and heavenly identities.

peace of the household contributes to the peace of the city at large, the earthly peace contributes to the heavenly peace by preserving a harmony in the “things relevant to this [mortal] condition.”<sup>69</sup> Indeed, “both kinds of men [of the earthly and the heavenly cities] and both kinds of households alike make use of the things essential for this mortal life; but each has its own very different end in making use of them.”<sup>70</sup> The earthly city aims at an earthly peace and limits its ambitions to a harmony that allows for the material benefits that such a peace affords the mortal life. But the heavenly city also uses and contributes to this peace through its obedience to its laws. It does so both for the benefits that such an earthly harmony affords the mortal condition its members share *and* for the support it provides to the pilgrims in their course towards a heavenly harmony – and in their appeals to those not yet on pilgrimage.

Recalling an earlier section of this paper, the law that restrains human “foolhardiness” through fear (as opposed to through love of justice, the higher source of obedience) serves both the earthly and the heavenly communities. It allows the innocent to live in peace and it restrains the wrong-doing of the unscrupulous. This latter is a benefit to the unjust in itself *and* it opens opportunities for their wills to be healed such that they come to desire to restrain wrong-doing out of love for justice rather than fear alone. Peace affords greater opportunities for morally formative friendships to develop in a way that conditions of conflict, chaos, and violence hinder.

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<sup>69</sup> *civ. dei* XIX.16 trans. Henry Bettenson (New York: Penguin, 1972).

<sup>70</sup> *civ. dei* XIX.17. The language of “use” may suggest that the heavenly city has a “merely instrumental” relationship to the earthly city. Certainly for Augustine, their relationship to the final end is not equal; as von Heyking notes, “[e]cclesiastical ends surpass political ends because the Church administers the sacraments for loving God, and its universality teaches human beings that their final end transcends their political end.” Von Heyking, *Politics as Longing*, 210. Political ends may also simply be falsely conceived or wrongly directed if they are not ordered to the true final end. But as von Heyking remarks (p. 211, 216), the surpassing of the earthly city’s end by the heavenly city’s as expressed here by “use” does not imply a “merely instrumental” relationship. As I argue in the context of the neighbor-love debate, use regards the right ordering of the temporal and earthly realm in relation to the eternal and heavenly realm, between which there is an important continuity. See Sarah Stewart-Kroeker, “Resisting Idolatry and Instrumentalisation in Loving the Neighbor: The Significance of the Pilgrimage Motif for Augustine’s *Usus-Fruitio* Distinction,” *Studies in Christian Ethics* 27:2 (May 2014).



Thus both earthly and heavenly cities desire and contribute to earthly peace, but with different ends.

The question of their cooperation on the justly loving restoration and healing of the wrong-doer is potentially more complex. Certainly from the heavenly-ecclesial vantage, the practices of intercession in civil matters of justice may cooperate with the earthly city as they do with the earthly peace. In other words, the earthly city may seek to restore dangerous persons or behaviors to a level of stability conducive to preserving temporal stability and prosperity, while the heavenly city seeks to restore them to both earthly and heavenly well-being. Their means of accomplishing these aims may converge to some extent. In this case, earthly citizens may seek reform for the sake of earthly peace and heavenly citizens may cooperate in this aim while also seeking the possibility of healing reform in a greater sense, even if their usefulness to the earthly city is not perceived in these terms.<sup>71</sup>

But a more complex possibility emerges from the transformative nature of the heavenly end, though Augustine himself never articulates such a possibility explicitly. The practice of justice for the heavenly citizen on earth cannot be restricted its relevance for the human mortal condition; justice, as a form of love ordered by the love of God, necessarily has a heavenly referent. Furthermore, the activities that contribute to maintaining the earthly peace include the administration of discipline, which for Augustine involves the practices of justice. This complicates the picture of cooperation. When earthly citizens cooperate with heavenly citizens in seeking not merely to assign each their due according to the law but to heal and restore them, they may cooperate – in some sense – in pursuing a justice transformed by love. It would, no

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<sup>71</sup> Recall this citation: “However, there is certainly much value in restraining human foolhardiness by the threat of law, both so that the innocent can live in security among the unscrupulous, and also for the unscrupulous themselves, that as long as fear of punishment might limit their opportunities, then appeals to God might heal their wills. However, the bishops’ practice of intercession does not contradict this ordering of human affairs.” *ep.* 153.16.

doubt, be a rare and sporadic occurrence. Its possibility authorizes no grand narratives of progress or Christian triumphalism. And yet the articulation of such a possibility is important.

If the earthly citizen cooperates with the heavenly citizen in the restoration of the wrong-doer, even if they only share the proximate aim of earthly restoration, the nature and manner of this proximate restoration will be transformed on the heavenly citizen's part by their heavenly end. That is, their understanding of what restoration requires (even to the earthly community) will be inflected by their understanding of what true healing is. Thus when earthly citizens share and participate in the pursuit of proximate aims transformed by the heavenly citizen's ordering of those same aims to an eternal end, even if they conceive of that proximate aim from a different vantage point, they cooperate – incompletely, parabolically – in this transformed proximate aim. Note that their cooperation still concerns proximate aims. The final end remains un-shared. Thus earthly citizens do not fully share the transformed proximate aim for they do not pursue them *as transformed*, but there is nevertheless a cooperation in the pursuit of proximate aims that exceeds the possibilities of merely earthly, temporal, and proximate realm on its own.

This does not change the earthly citizens' fate, unless they are themselves transformed. From Augustine's perspective if one does not seek to draw a wrong-doer into the fellowship of Christ, in the end one has not done them much good at all, or at least the good one does is significantly limited.<sup>72</sup> Ultimately, Christian friendship seeks to form people for restoration to the heavenly community. This does not, however, restrict its activities exclusively to the ecclesial realm, as Augustine's own actions in his role as bishop demonstrate. Nor does it render those activities "strictly" eschatological in nature (if such a thing can be conceived): although he aims

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<sup>72</sup> "Moreover, there is no space to reform character except in this life. After that, each person will have whatever he has won for himself here. That is why we are forced to intercede for the guilty, out of love for the human race. For otherwise punishment will end this life for them, and once it is ended, they will not be able to bring their punishment to an end." *ep.* 153.3.

at and hopes for ultimate healing, Augustine's intercessions seek to enact concrete, temporal changes that will make valuable, reparative differences in the lives of human beings and their earthly communities. Earthly politics may be infused in real and anticipatory ways by the grace of the heavenly end, while maintaining a distinction between civil and ecclesial realms and earthly and heavenly ends.

The aims of Christian love and the aims of restorative justice may converge harmoniously, if with ends to an important extent distinct. Augustine's reflections on the role of friendship in the morally formative response to wrong-doing and the administration of discipline toward healing cohere with the communal, relational, and rehabilitative emphasis of restorative justice. Augustine demonstrates a form of "restorative reasoning" when he reflects upon the administration of justice – that is, a reasoning that is primarily concerned with the restoration of the wrong-doer and that thus attends to particular people, communities, and relationships in a nuanced way. Augustine provides a theological ethic of friendship as central to the correction and reform of the wrong-doer, which coheres with the damning evidence against solitary confinement as a disciplinary tool and with the success of community and relationship-based programs of support exemplified by CoSA. Augustine's understanding of the common ground that the earthly and heavenly communities share articulates how Christian love in its soteriological and eschatological orientation may nevertheless intercede in and contribute to the disciplinary systems of civil society, and at the same time reveal a different way of life thereby remaining true to the heavenly end toward which the church orders its earthly action. Thus may the aims of healing the sinner's soul and the rehabilitation of the criminal run parallel to a degree. In so doing, a faith-based initiative may illuminate an alternative form of relationship with a wrong-doer to an otherwise hostile civil society, transforming both parties. This is a vision

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of the morally formative power of friendship, and it answers the cry of the wayward soul, the isolated prisoner, the re-integrating offender, and the fearful community.