

# Augustine on Canonical Penance: An Ethic of Criminal Sentencing

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## Introduction

Canonical Penance in the early Church and the modern concept of prison, broadly construed, are both processes of exclusion, reform, and reintegration in response to an infraction of law. Augustine's writings on Canonical Penance are some of the most extensive, and consider a number of themes which might be relevant to criminal justice. Specifically, I will consider: the role of humility, both on the part of the authorities and the perpetrator, and whether an appropriate response places more emphasis on the nature of the infraction of the rules or of the person committing it.

Augustine is conveniently historically situated for an effective comparison. By the time of his birth, Canonical Penance was 'an established and easily recognisable ecclesiastical institution'.<sup>1</sup> This enables us to avoid the potential pitfalls that come with attempting to compare the prison system with the more informal and hard-to-pin-down earliest forms of penance. North Africa was also at the heart of many of the early controversies surrounding penance,<sup>2</sup> meaning both that the historical setting is well documented and that Augustine responded to a variety of pertinent debates.

In attempting to construct an Augustinian ethic, I am not asking what Augustine would have thought of modern criminal sentencing, an impossibly speculative task. Rather, I am applying some of his ethical principles—which he expounded in relation to an institution with some significant parallels—to a modern ethical question. The value of this will vary depending on one's starting point. For those with a theological commitment to Augustine's principles, it may help to illuminate what criminal sentencing should look like. For others concerned with the ethics of criminal sentencing, it may help to reveal the assumptions underlying our discourse, and at least one other way of approaching them. Finally, for the intellectual historian, it may reveal something of how our approach to questions of humility and justice have or have not changed.

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1 James Dallen, *The Reconciling Community: The Rite of Penance* (Liturgical Press 1992) 57.

2 *ibid* 70.

## Canonical Penance at the time of Augustine

The earliest Christian penance was baptism. When adult baptism was the norm and Christianity was still a small sect, the act of turning away from the sinful world was an enormous commitment. Penance for one's previous life was essential for a community that defined itself in opposition to the rest of the world. This is where the communal element of penance has its origins. Forgiveness of an individual's sins was relevant not just to that individual, but also to the Church whose holiness in the face of an unholy world depended on it. The Church was a community that had developed a way to reintegrate those who had excluded themselves through the most serious of sins, in the form of Canonical Penance. When examining this reintegration, we must be careful not to lose sight of the fact that it was at heart 'a kind of communal examination of conscience, rather than a way to bear down on individual sinners'.<sup>3</sup> Sin was a harm done to and a stain on the whole community, and so penitential processes, from baptism to canonical penance, aimed to make the community whole again.<sup>4</sup> Collective responsibility for sins is emphasised in some of the earliest writings on Christian penance in 1 Clement 2:6: 'You used to grieve over the unlawful acts of your neighbours and considered their shortcomings your own.'<sup>5</sup>

By the time of Augustine, Canonical Penance was an 'established and easily recognized ecclesiastical institution'.<sup>6</sup> Entry into Canonical Penance was a serious undertaking. Many were compelled to

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3 Allan D Fitzgerald, 'Penance' in Susan Ashbrook Harvey and David G Hunter (eds), *The Oxford Handbook of Early Christian Studies* (Oxford University Press 2008) 787.

4 From the fourth and fifth centuries, the lived experience of penance started to move away from its communal origins somewhat. See Fitzgerald (n 3) 801. However, since we are examining the thought of Augustine, who was writing before this process was complete and whose ecclesiology emphasised a mixed community of saints and sinners who bore one another's burdens, it is nonetheless important to consider the act of penance, in its restoration of sinners to a Church so defined, as communal in nature.

5 In Bart D Ehrman (ed and tr), *The Apostolic Fathers* (Harvard University Press 2014).

6 Dallen (n 1) 57.

undergo it for acts of sin, though others chose to go through it: 'Some people have asked for a place among the penitents themselves; some have been excommunicated by me and reduced to the penitents' place'.<sup>7</sup> Though one's status as a penitent was public information, the nature of the offence could be private. This is presumably a result of the gravity of the sins involved: requiring public confession would hardly encourage potential penitents to come forward.

One of Augustine's sermons provides us with a description of the sins that required Canonical Penance: 'There is a serious wound involved; perhaps adultery has been committed, perhaps murder, perhaps some sacrilege, a grave matter, a grave wound, lethal, deadly'.<sup>8</sup> A further indication of the significance of Canonical Penance was that it could only be undergone once, for fear of lessening its gravity through repetition.<sup>9</sup>

Penance was characterised by exclusion from the Eucharist, the result of estrangement from God following the breaking of one's baptismal vows through serious sin. Additional penitential processes, including fasting and almsgiving, were used to enhance the corrective effect of temporary exclusion from the Eucharist.<sup>10</sup> This exclusion extended to praying separately from the rest of the congregation: 'Pray, penitents – and the penitents go out to pray'.<sup>11</sup>

Canonical Penance concluded with readmittance into the congregation and the Eucharist. A ritual involving imposition of hands by the bishop and public prayers signalled the end of the process.<sup>12</sup> Its effects did not cease there, however, since former penitents could not be clerics, as Augustine discusses in one of his letters: 'the Church established the rule that after penance for some crime no one should enter the clerical state or return to the clerical state or remain in the clerical state'.<sup>13</sup>

### Humility of the offender

The notion of humility in Augustine is rooted in its ultimate manifestation, Christ humbling himself on the cross. Augustine took this to be the cure to humanity's pride and therefore the source of humility: 'So for the treatment of human beings God's wisdom – in itself both doctor and medicine – offered itself in a similar way. Because human beings fell through pride it used humility in healing them ... We made bad use of immortality, and so we died; Christ made good use of mortality, and so we live'.<sup>14</sup> The sight of God's humiliation on the cross, when combined with God's grace, is what Augustine claims leads to humility, shifting our perspective so that we can focus on matters of true importance. John Cavadini explains the operation of this process as 'arresting our limited and

empty vision on something real, the compassion of God, who was unashamed to put aside the power and prestige of divinity'.<sup>15</sup> We can see this shift of attention from the self to God in Augustine's twenty-fifth homily on the Gospel of John, where the shift from pride to humility lies in the fact that the humble man 'does not do his own will, but God's'.<sup>16</sup>

The question for us remains how the process of Canonical Penance contributed to humility. We see in Augustine a distinct concrete aspect of, or contributing factor towards, humility—namely, being humbled. In the case of Christ, being humbled constituted becoming a man and dying on the cross. The penitent, on the other hand, is humbled by the restriction of status, both because of the lack of status associated with penitents<sup>17</sup> and because of concrete restrictions on their future ambitions, namely that they could not become clerics. In his letters, Augustine describes the reasoning behind this latter provision: 'no one should be a cleric so that, without any hope of temporal dignity, the remedy of humility might be greater and more genuine'.<sup>18</sup> The idea here is that the stripping of status made it harder to take pride in one's position, removing the barrier to refocusing on God, as required for humility.

The value of humility to Canonical Penance lies in its healing element. Penance and humility are both, for Augustine, processes of healing.<sup>19</sup> For Canonical Penance to be successful, one's attitudes must change such that future action is directed not towards one's own pride in status, but rather towards God. This is what Augustine's concept of humility achieved, and why it played so central a role in his discussion of Canonical Penance.

Though humility is a central part of Augustine's conception of Canonical Penance, he by no means considered it an inevitable consequence of the formal procedure of being humbled during Canonical Penance. Many of the instances where he emphasised the value of humility were descriptions of how it was lacking in penitents, specifically those compelled to undergo the process (as opposed to those undertaking it voluntarily): 'those who have been excommunicated<sup>20</sup> by me and reduced to the penitents' corner don't want to rise from there, as though penitents' corner were a really choice spot' and, more explicitly, 'it ought to be a place for humility, and it becomes a place for iniquity'.<sup>21</sup> Augustine is clear here that Canonical Penance is not just an externally administered process, such that it inevitably results in forgiveness and humility. The proper attitude on the part of the penitent is essential, however much the concrete removal of status might assist this.

We have from Augustine the idea that humility, constituting a shift away from a focus on the self, can be driven by concrete action to reform the individual, though the action can only assist and not guarantee humility. The difficulty with this notion is that

7 Augustine, *Sermons (230–272B) on the Liturgical Seasons* (Edmund Hill tr, John E Rotelle ed, New City Press 1993) Sermon 232 para 8.

8 Augustine, *Sermons (341–400) on Various Subjects* (Edmund Hill tr, John E Rotelle ed, New City Press 1995) Sermon 352 para 8.

9 'And yet it was a cautious and salutary provision that a place for that most humble penance be granted only once in the Church for fear that cheap medicine might become less beneficial for the sick.' Augustine, Letter 153 para 7 (Roland J Teske tr).

10 Claudia Rapp, 'Spiritual Guarantors at Penance, Baptism and Ordination in the Late Antique East' in Abigail Firey (ed), *A New History of Penance* (Brill 2008) 123.

11 Augustine, Sermon 232 para 8 (Edmund Hill tr).

12 Rapp (n 10) 123.

13 Augustine, *Letters 156–210* (Roland J Teske tr, Boniface Ramsey ed, New City Press 2004) Letter 185 para 45.

14 Augustine, *On Christian Teaching* (Roger Green tr, Oxford University Press 2008) Book 1 para 28–29.

15 John Cavadini, 'Pride' in *Augustine through the ages: an encyclopedia* (Allan Fitzgerald ed, Eerdmans 1999) 682.

16 Augustine, *Homilies on the Gospel of John 1–40* (Edmund Hill tr, Alan Fitzgerald ed, New City Press 2009) Homily 23 para 16.

17 'It [the penitent's corner] ought to be a place for humility' Augustine Sermon 232 para 8 (Edmund Hill tr).

18 Augustine, Letter 185 para 45 (Roland J Teske tr).

19 For an extensive comparison of the operation of humility with that of medicine, see Augustine, Homily 23 on the Gospel of John para 16 (Edmund Hill tr).

20 'Excommunication' here refers to temporary exclusion from the Eucharist as part of penance rather than permanent exclusion from the congregation.

21 Augustine, Sermon 232 para 8 (Edmund Hill tr).

for Augustine, the goal shift was towards God, which cannot be replicated in a secular state. Equally, we can't provide an endpoint which is an explicit alternative to God, since we would then undermine the Augustinian notion of humility and any value the insight might have. We require, then, a goal for this focus shift which has value from the vantage point of a secular state without displacing God.

We can find this goal in the good of loving others, concretely manifested in serving our community. This certainly has a scriptural foundation in John 13:34:<sup>22</sup> 'I give you a new commandment, that you love one another. Just as I have loved you, you also should love one another.' In his analysis of this passage from John, Augustine links the love of others to the love of God: 'he who loves his neighbour in a holy and spiritual way, what does he love in him except God?'<sup>23</sup> We can therefore make the service of others the goal of the focus shift when using humility in reform, since for Augustine it mediates love of God.<sup>24</sup> This also helps us relate the individual elements of reforming the criminal or sinner to the communal elements of crime or sin, since our response is directed at the community. We can therefore go some way to synthesising the interests of the individual and the community in our response to crime. In placing a value on humility, we are helping to reform the individual through shifting their focus, while also acknowledging the harm done to the community and shifting the focus of the offender to positive participation in that community.

In terms of concrete applications, such an Augustinian conception of reforming through shifting the focus of the offender towards their community might help us to construe the value of interventions like restorative justice and community service. It might also provide a reason to measure reform more broadly than through reoffending rates, since this kind of reform is directed at service of and being invested in the community, rather than just not committing further crimes.<sup>25</sup>

## Humility in the authorities

Humility is not just a tool of reform for the Canonical Penitents themselves but also, according to Augustine, a necessary virtue of those who hold authority over the process, namely bishops. While his discussion of this in relation to Canonical Penance specifically is limited, he is clear that in dealing with crimes against civil or ecclesiastical law, humility is required in order to maintain the necessary attitude of mercy.

Letter 153 is a useful example of this. It helpfully relates the civil and ecclesiastical cases, as it is a response to Macedonius' concerns over bishops' intercessions on behalf of criminals.<sup>26</sup> In the process of explaining to Macedonius why it is right to intercede on behalf of the guilty, and how this does not make bishops complicit in their

crimes, Augustine draws a link between our own status as sinners and our duty to be merciful towards others. Because we all require forgiveness, so we must extend it to others: 'The judgment of God has filled them with fear so that they keep in mind that they need God's mercy on account of their own sins and do not suppose that it counts as a failure in their office if they act mercifully in any way toward those over whom they have the legitimate power of life and death.'<sup>27</sup> The other side to this is that a lack of humility, that being in this case the failure to recognise our sinful nature and need for forgiveness, results in a pride and arrogance which leads to excessive severity. In discussing John 8:2–12, Augustine concludes that when Jesus points out that none of the accusers who present the adulterous woman to him to be stoned are sinless, 'the pride of her pursuers yielded.'<sup>28</sup> There was pride in their judgement which, though within the law, ignored the fact that the accusers were sinners as was the accused. In forcing them into humility, Jesus forced them into mercy: 'After he had said to those who presented the adulteress to him for punishment that the one who knew that he was without sin should be the first to throw a stone at her, their anger collapsed as their conscience trembled.'<sup>29</sup> Violence and severity come with arrogance, and are displaced by the mercy that comes with humility.

Robert Dodaro links this correlation between humility and mercy with Augustine's dispute with Pelagius. Put simply, the Pelagian belief that human beings can be sinless and that the source of virtue can come from man rather than God's grace means that they are not forced into humility by recognition of their sins.<sup>30</sup> This contrast with Pelagianism helps us to clarify how humility in authority is, as we previously discussed in the case of humility in penitents, a focus shift away from the self and towards God. For Augustine, humility in authority is the recognition that we attain virtue and avoid sin by the grace of God. The Pelagian arrogance is the assumption that we can be the source of our own virtue. The focus shift of humility in this case therefore lies in moving from identifying the source of our virtue in ourselves to identifying it as being external, namely in the grace of God.

We can take the following idea from Augustine's discussion of the relationship between humility, mercy, arrogance, and severity: excessive severity can be a result of arrogance, while mercy can be the result of humility. The reason for this is that humility comes with the recognition of the role of external forces in shaping human decisions, whereas arrogance is blind to this in its attempt to claim individual credit for virtue. Severity which results from this arrogance is therefore a blind spot, a failure to acknowledge the origins of virtue and vice. We should therefore tend towards humility, which will establish a presumption of mercy. Movement away from this starting point of mercy towards severity should require careful justification, to avoid decisions based on arrogance. In discussing the applicability of these insights to the legal system, we must address an immediate disparity. Augustine grounds humility to authority in the fact that we are all sinners in need of God's forgiveness. There is no direct parallel in the legal case. In fact, given the restrictions on who can become a judge or magistrate, none of those deciding on sentences are convicted criminals in need of the law's forgiveness. What then, in a secular setting,

<sup>22</sup>New Revised Standard Version used henceforth.

<sup>23</sup>Augustine, *Tractate 65 on the Gospel of John*, para 2 in *The Fathers of the Church: St Augustine Tractates on the Gospel of John*, 55–111 (John W Rettig tr, Catholic University of America Press 1994) 52.

<sup>24</sup>This is a simple instance of the *uti-frui* distinction. For Augustine's explanation, see Book 1 of *On Christian Teaching*.

<sup>25</sup>For example, see Christopher Stacey's summary of the issues surrounding poverty in those who have a criminal record but have resisted reoffending: Christopher Stacey, 'Looking beyond reoffending: criminal records and poverty' (2015) 99 *Criminal Justice Matters* 4–5.

<sup>26</sup>For a discussion of humility as a civic virtue in contrast to the Roman ideals, see Robert Dodaro, *Christ and the Just Society in the Thought of Augustine* (Cambridge University Press 2004) ch 6.

<sup>27</sup>Augustine, *Letters 100–155* (Roland J Teske tr, Boniface Ramsey ed, New City Press 2003) Letter 153 para 8.

<sup>28</sup>Augustine, Letter 153 para 11 (Roland J Teske tr).

<sup>29</sup>*ibid.*

<sup>30</sup>Dodaro (n 26) 186–87. The chapter as a whole also provides an excellent elucidation of how Augustine places a penitential emphasis on leadership.

need sentencers be humble about? It turns out the answer to this is not altogether different from the answer Augustine provides, namely the role of external forces in determining which side of the courtroom you find yourself on. For Augustine, virtue was to be attributed to the grace of God. In the case of the legal system, external forces, whether systematic privileges or simply luck of circumstances, play a role in whether you find yourself a judge or in need of a judge's mercy.<sup>31</sup> This is not to remove personal choice from the equation. However, it would be an arrogant sentencer who failed to acknowledge that of the many factors that contribute to a crime, only some are the personal responsibility of the criminal. Moreover, not all these factors will be obvious, and therefore they may not be presented as mitigating circumstances. Humility will lead to the acknowledgement of imperfect information and the influence of external forces, and should therefore lead to an appropriate level of mercy. An Augustinian ethic of criminal sentencing would be a humble, and therefore merciful, one.

### Sinner rather than sin

Reform is often portrayed, particularly in the popular press, as in the interest of the individual, while punishment of the act is in the interest of society. Therefore, in deciding how to treat an individual and whether to emphasise reform or punishment, we are effectively deciding between their interest and the interest of society.<sup>32</sup> One potential resolution of the tension between these apparent competing interests is to insist that reform is in both the individual's and society's interests because it prevents reoffending and therefore further societal damage.<sup>33</sup> This construes the value of reform, at least as far as society's interests are concerned, as instrumental: reform is beneficial to society because it prevents harm to society. Augustine, however, places a non-instrumental value on reform.

Augustine makes clear that he desires reform of the individual rather than punishment of the act. The end at which the instrument of being humbled is aimed is to be discussed not in terms of what the act committed demands in a natural justice sense, but rather in terms of what most effectively reforms the agent. Being humbled is therefore an instrument of agent-reform rather than act-punishment. In other words, the emphasis is on the sinner rather than the sin. Being humbled is necessary for Canonical Penance, but not sufficient to bring about the humility required: 'What's the use of your humbling yourselves, if you don't change your behaviour?'<sup>34</sup> This quotation from Sermon 392 makes it clear that for Augustine change of behaviour is a part of the aim of the process itself. Being humbled serves the aim of changing one's behaviour, refocusing

31 For one example of disproportionality in outcomes based on factors outside the individual's control, see the Lammy Review, which examines the treatment of and outcomes for BAME individuals in the criminal justice system. Government of the United Kingdom, *The Lammy Review* (2017).

32 See, for example, the contrast Melanie Philips draws between the welfare of the criminal and that of society: 'the Council's concern is directed wholly at the welfare of the criminal rather than the welfare of society.' Melanie Philips, 'Why we must take the public's lead... and jail ALL drug dealers' *Daily Mail* (6 April 2011). <<https://www.dailymail.co.uk/debate/article-1373071/Why-publics-lead--jail-ALL-drug-dealers.html>> accessed 26 September 2020. This was in response to a Sentencing Council consultation paper which recommended avoiding custodial sentences for more minor drug dealing offences in certain circumstances in order to avoid overly punishing those exploited by higher-level dealers.

33 See n 41 below for how recent government documents tend to construe rehabilitation's value in terms of the prevention of reoffending.

34 Augustine, Sermon 392 para 6 (Edmund Hill tr).

attention from the self to God, and in the process reorienting one's actions from being directed towards the self, to being directed towards God.

Augustine's most illuminating discussion of the emphasis on reform over punishment concerns the distinction between public and private reproving, found in Sermon 82. He argues for rebuking privately in the case of private sins and publicly in the case of public sins. Augustine is unambiguous in his reasoning behind this: 'what I want to do is cure, not accuse.'<sup>35</sup>

Augustine is prepared, for the sake of private rebuke of private sins, to avoid civil involvement:

A bishop, for example, knows someone or other is a murderer, and nobody else knows he is. I want to rebuke him publicly, while you are looking for a chance to bring an indictment. Well of course, I will neither give him away, nor ignore his sin. I will rebuke him privately, set God's judgement before his eyes, terrify his bloodstained conscience, try to persuade him to repent.<sup>36</sup>

Augustine's attitude creates a primacy of ecclesiastical authority over civil equivalents. A bishop is to act not to facilitate an indictment—as one might think a citizen convinced of guilt is required to—but rather to maximise the curing effect, which Augustine argues is achieved through private rebuke. It might seem that we could account for Augustine not informing civil authorities as a simple application of the seal of confession, but in the next paragraph Augustine applies this principle to a case where the wife of an adulterer has come forward with her husband's sin. She is not confessing a sin, so Augustine's knowledge of the husband's infidelity is not under the seal of confession. Yet he chooses to keep this sin private. This tells us that keeping sins private in the cases of the murderer and the adulterer is motivated by more than simple respect for the seal of confession. These cases show us that the emphasis is on the agent, not the act and the natural justice of publicly holding the perpetrator responsible, to the extent of keeping offences which are punishable by civil courts private when this best serves reform.

One fairly natural reading of this would be that Augustine has prioritised the individual sinner's interest over that of the community. This may be an appropriate response for one charged with the pastoral care of that individual, but hardly seems applicable in the case of a criminal justice system with obligations towards the victims of crime and the public at large. However, to read Augustine like this is to ignore the communal context of the penance he is discussing. We have seen that in all forms of penance in the early Church, the response to sin was deemed necessary not simply for the sake of the individual sinner, but to make whole again the unity of the Church.<sup>37</sup>

For Augustine, the Pauline command in Galatians 6:2 to 'Bear one another's burdens and in this way you will fulfil the law of Christ' includes the burden of committing sin. Since we bear the burden of each other's sins, in placing the emphasis on sinner rather than sin by focussing on agent-reform over act-punishment, we are lifting a burden off both the individual and the community. Augustine here makes implicit use of the *usus-fruitio* distinction in arguing

35 Augustine, *Sermons (51–94) on the Old Testament* (Edmund Hill tr, John E Rotelle ed, New City Press 1991) Sermon 82 para 11.

36 Augustine, Sermon 82 para 11 (Edmund Hill tr).

37 See the section 'Canonical Penance at the Time of Augustine' above.

that if we neglect our responsibility to those who sin, then we fail to love God fully:

Thus if we love a weak person less because of the vice that made him weak, we should consider him in light of the one who died on his behalf. Not to love Christ, however, is not weakness but death. Hence we should be very careful and implore God's mercy lest we neglect Christ because of a weak person, when we should love the weak person because of Christ.<sup>38</sup>

Augustine links this bearing of burdens at an individual level to the unity of the Church as a whole. In responding to the Donatists, who emphasised the purity of the Church over its unity,<sup>39</sup> Augustine argued that sinners were the responsibility of the Church, and that bearing their burdens was an essential part of maintaining its unity: 'All of these catholic unity embraces in her motherly breast, bearing each other's burdens by turns, and endeavouring to keep the unity of the Spirit in the bond of peace, till God should reveal to one or other of them any error in their views.'<sup>40</sup> In emphasising the reform of the sinner rather than punishment of the sin, Augustine was therefore not prioritising the individual over the group, but rather grounding the reform of the individual through Canonical Penance in the unity of the whole.

Put simply, when a member of the Church sins, the damage done is twofold. Firstly, the damage caused by the specific sin itself (for example a murder causes someone to die), and secondly, the burden of committing a sin. These are both burdens which, according to Augustine, we all bear. In emphasising the sinner over the sin, Augustine is allowing for proper reform. This is an attempt to lift the latter burden, in the process healing both the individual and the community that bear it.

The question remains: how do we apply this Augustinian insight to a criminal justice setting? In the case of Canonical Penance, the failure to reform the flawed individual was a failure to bear the burdens of others which, in the *corpus permixtum*, we all bear at some point. More broadly, in seeking the unity and success of a group (in Augustine's case, the Church, in the modern case, wider society), we must be prepared to bear the burdens of those who break (canon or civil) law. Government documents of recent years<sup>41</sup> tend

38 Augustine, *Responses to Miscellaneous Questions: Miscellany of Eighty-Three Questions* (Boniface Ramsey tr, New City Press 2008) Question 71 para 7.

39 During the persecution of Diocletian's reign, many bishops had lapsed before, at the end of the persecution, repenting. Donatists argued that repentance was not sufficient and that, having committed apostasy, they could no longer be considered to be legitimately administering the sacraments. The resulting breakaway was the Donatist Schism. Augustine took the position that schism was a serious sin which violated the unity of the Church for the sake of unattainable purity. In doing so he elaborated his idea that the Church on earth was a *corpus permixtum* rather than a society free from sin.

40 Augustine, *On Baptism, Against the Donatists* (JR King tr) in Marcus Dods (ed), *The Works of Aurelius Augustine*, vol 3 (T & T Clark 1872) Book 2 para 8.

41 See, for example, the Coalition Government's 2013 document, *Transforming Rehabilitation: 'Whilst we continue to tolerate so many offenders passing through the justice system and going on to commit more crimes, we are in fact tolerating more victims, greater cost to the taxpayer and further damage to communities.'* Ministry of Justice, *Transforming Rehabilitation: A Strategy for Reform* (Cm 8619, 2013) 9 <<https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>> accessed 30 July 2020. Notable for its absence is the effect on the

to conceive rehabilitation of prisoners as being valuable to society because it prevents reoffending and therefore further damage to the community. This treats prisoners as instruments of harm or benefit to the rest of society, and not as a 92,500 strong part of it. Augustine's emphasis on reform of the individual recognises that those subject to criminal justice proceedings are a part of society and so society's interests are intrinsically linked to theirs. If we are to bear the burdens of those affected by crime because they are a part of a society to which we have certain obligations, then we must bear the burdens of those who, as a part of the same society, commit crimes. Sentences that do not attempt reform (for example, whole-life imprisonment on ground of public protection) must not be regarded simply as ways to prioritise the interest of wider society over that of the criminal. It is not within the scope of this article to comment on whether they are ever necessary,<sup>42</sup> but it must be acknowledged that in Augustinian terms, in failing to bear the burden of the individual, they fail the society of which the individual is a member. Augustine's insight here is essentially to add a dimension of value to rehabilitation. In creating policy and handing down sentences, we must recognise that proper rehabilitation is intrinsically (and not just instrumentally) in the interest of society.

## Conclusion

From Augustine we have drawn three central principles for criminal justice based on his approach to Canonical Penance. Firstly, rehabilitation should aim at the creation of humility, constituting a goal shift towards service of the community. This is not only a standard against which to hold efforts at reform, it also helps synthesise the interests of the individual and the community. Secondly, severity can result from arrogance, and mercy from humility. Since arrogance is a blind spot, namely the failure to acknowledge the role of external factors in driving crime, which humility corrects, we should strive for a presumption of mercy, and for humility in sentencing. Finally, effective rehabilitation is intrinsically in society's interests, independent of its instrumental value in preventing reoffending, since those who commit crime are members of society and the burden of a failure to rehabilitate is therefore borne by society as a whole.

The above provides principles against which an Augustinian ethic of criminal justice might be measured. A range of positions on criminal justice reform, ranging from small changes to sentencing processes right the way through to a complete overhaul of the justice system, are consistent with these principles as stated. Which changes one makes depends on both the empirical data on which strategies best achieve compliance with these principles, and other moral principles one holds which are relevant to the justice system. Augustine's writings alone, though extensive, cannot provide these. However, we have found clear guidance in an Augustinian ethic: reform is the starting point, and aims to create humility at all levels.

prisoners themselves. See also Robert Blakey, *Rehabilitation in Prisons* (House of Lords Library Briefing 2017) <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2017-0102#fullreport>> accessed 30 July 2020.

42 For example, it seems plausible that there is a situation in which they do the least damage to society, if not none, of the options available.