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The Economy of Salvation: The Origins of Punitive Imprisonment in the Latin West

Lily Oberdorfer

Introduction

Whether it is the maximum-security penitentiary that permeates the fibers of contemporary culture or the literary imagery of prisons that have housed persons as diverse as Socrates and John of the Cross, the prison is commonly perceived as synonymous with punitive justice. Various historians have studied the rise of the penitentiary system in Europe during the late eighteenth and early nineteenth centuries. Most scholars, however, examine the philosophies of punishment and the decline of public executions rather than the origins of the prison and specifically how imprisonment began to be conceived punitively.¹ Although the prison is traced back to early Mesopotamia and ancient Egypt, punishment and imprisonment have not always gone hand-in-hand. Before the late thirteenth century, imprisonment was rarely used as a means of punishment; instead, it was either employed as a monastic space for spiritual growth or as a transitional space used to temporarily detain criminals.

¹ See Bentham, *An Introduction to the Principles of Morals and Legislation*; Foucault, *Discipline and Punishment*; Rusche and Kirchheimer, *Punishment and Social Structure*; Spierenburg, *The Spectacle of Suffering*; Garland, *Punishment and Modern Society*.

To fully understand the origins of punitive imprisonment, one must begin with the eremitic and anchoritic traditions that established confinement as the locus of religious life in their pursuit of asceticism and the purification of the soul. These traditions solidified the use of confinement for spiritual revelation by the fifth century, when cenobitic monasticism began to pervade the Latin West. A response to the isolation associated with the eremitic and anchoritic life, cenobitism was an early form of monastic living that continued to seek seclusion from the exterior world while also placing a new emphasis on community life within the monastery. During the twelfth century, the development of larger and more organized monastic orders, such as the Benedictines and the Cistercians, resulted in the need for a new ecclesiastical disciplinary procedure. By 1200, the emergence of both a new spirituality that centered its attention on suffering and penance as well as a rise in heterodoxy culminated in three fundamental developments that set the precedent for the juridical implementation of punitive imprisonment: the emergence of the monastic prison, the inquisitorial procedure, and the birth of Purgatory. During the thirteenth century, the prison cell had become a mandatory component of the monastery and the inquisitorial procedure had emerged, shifting both church and civil criminal court procedures. Concomitant with the rise of the monastic prison and the inquisitorial procedure was the conceptual development of Purgatory as a literal space of transition. An intermediary between heaven and hell, the concept of Purgatory intimately linked ecclesiastical and civil penology. By the late thirteenth and early fourteenth centuries, the concept and practice of

imprisonment as a form of punishment had expanded beyond Church law with the establishment of the municipal prison throughout Italy. Although the penitentiary system may be a modern construct, the ultimate inception of imprisonment as a form of punishment is situated within the Middle Ages, when it emerged within the confines of western monasticism and subsequently began to extend beyond ecclesiastical sanction to the penology of civil society.

Confinement in the Religious Imagination

The notion of confinement is an important aspect of the religious imagination of the Latin West. Early Christendom employed various metaphors of imprisonment that influenced the construction of punishment in the medieval world. These metaphors can be observed as setting the foundation in which the idea of imprisonment as a punitive apparatus emerged and matured.² Preceding the cenobitic lifestyle and the formation of early monasticism that was developing by the fifth and sixth centuries throughout Europe, the eremitic tradition solidified the idea of confinement as a penitential experience. Associated with the 'Desert Theology,' eremitism emphasized a solitary lifestyle in which one would live in individual isolation as a means for seeking spiritual correction and expiation.³ Although eremitism and anchoritism shared certain characteristics, anchoritism differed in that it entailed the specific practice of religious solitude in which an

² Megan Cassidy-Welch, *Imprisonment in the Medieval Religious Imagination, c.1150-1400*, (New York: Pelgrave Macmillan, 2011), 4.

³ Norman Johnston, *Forms of Constraint: A History of Prison Architecture*, (Chicago: University of Illinois Press, 2000), 17-18.

individual would be locked away within structures known as “anchorite cells, anchorages, or ankerholds.”⁴ By the sixth century, the spiritual tradition of cenobitism emerged, which focused on community life rather than a life of individual seclusion. The cenobitic life therefore became associated with the development of monasticism, specifically its expansion and the establishment of monastic orders throughout the twelfth century.⁵

Both the eremitic and cenobitic traditions fostered the link between confinement and religious mysticism. As a result, confinement began to be employed as a metaphor for spiritual revelation and salvation. Megan Cassidy-Welch speaks of the ‘medieval spatial *mentalité*,’ which refers to a “conception of the relationship between confinement in all its forms (imagined or actual, forced or voluntary, bodily or spiritual) and the promise of eternal liberation through participation in the Christian devotional economy.”⁶ This ‘spatial *mentalité*’ refers to a common monastic tradition that viewed the outside world, essentially anywhere other than the hermitage or monastery, as a form of prison. Even the physical body of an individual would often be referred to as the prison of the soul. Both the hermit cell and the monastic quarters were therefore perceived as sanctuaries that protected one’s body from the vices of the exterior world while also providing a structured space within which one’s soul could be

⁴ Ibid., 18.

⁵ C.H. Lawrence, *Medieval Monasticism: Forms of Religious Life in Western Europe in the Middle Ages*, (3rd ed. New York: Longman, 2001), 161.

⁶ Cassidy-Welch, *Religious Imagination*, 4.

united to God.⁷

As early as the second century, theological literature has referenced confinement as a fundamental element of asceticism. Tertullian states, “the prison serves the Christian as the desert [served] the prophet...even if the body is confined, even if the flesh is detained everything is open to the spirit.”⁸ Confinement from the world therefore was not considered a deprivation of liberty or necessarily painful; instead, “enclosure, inclusion, separation and the careful circumscribing of real and tangible boundaries worked with – not in opposition to – the liberation of the spirit and broader forms of freedoms.”⁹ Confinement, specifically monastic confinement, was understood as not only an essential instrument for penance and reconciliation, but also as a space for special revelation and a road to transcendence.¹⁰ Furthermore, during the Middle Ages the “liberation of contemplation” was believed to be accessible only to “those who understood that withdrawal from the world and participation in the coenobitic life could enable the subjective quest for union with God.”¹¹ Thus, the metaphor of imprisonment placed medieval monastic life, and therefore forms of confinement, as a key component of the consecrated life.

⁷ Megan Cassidy-Welch, “Incarceration and Liberation: Prisons in the Cistercian Monastery,” *Viator* 32 (2001): 25

⁸ Cited and translated by Guy Geltner, *The Medieval Prison: A Social History*, (Princeton: Princeton University Press, 2008), 85.

⁹ Cassidy-Welch, *Religious Imagination*, 10.

¹⁰ *Ibid.*, 124.

¹¹ Cassidy-Welch, “Incarceration and Liberation,” 25.

Punishment in Western Monasticism

Confinement was not employed as a method of punishment in early monasteries. Instead, acts of penance, voluntary or involuntary, were the prescribed disciplinary practice of early Western monasticism.¹² However, the Christian emphasis on penance and confession are fundamental to the establishment and practice of punitive confinement in the monastery. The statute, initially issued by the rule of St. Basil, requiring monks to frequently practice confession played a pivotal role in the solidification of penitential confinement as it stressed that monks must confess in solitude, removed from their fellow brethren.¹³ Although public penance was the established method for confession up to the seventh century, it was not available to a cleric, as he “could not receive this form of discipline since he had already been ordained by a laying of hands.”¹⁴ Clergymen, therefore, were commonly confined within monasteries to partake in confession and to receive corrective discipline. Although forms of punitive confinement can be traced back to the monastery as early as the fourth century, confinement as punishment did not become a common disciplinary practice until the thirteenth century when it spread rapidly throughout England, Italy, France, and Spain.¹⁵

As cenobitic monasticism burgeoned in the twelfth century, confinement and the monastery developed an

¹² Cassidy-Welch, “Incarceration and Liberation,” 26.

¹³ Andrew Skotnicki, *Criminal Justice and the Catholic Church*, (New York: Rowman and Littlefield Publishers Inc., 2008), 82.

¹⁴ *Ibid.*, 85.

¹⁵ *Ibid.*, 97-98.

intricate and nuanced relationship. Although confinement was a style of life fundamental to the cloister, it also evolved into an ecclesiastical disciplinary practice as monastic orders formed and expanded throughout Europe. As an early disciplinary practice, individual isolation was used to correct erring clergymen and monks, as exclusion from monastic routine was viewed as one of the harshest chastisements. This practice was also employed in hopes of fostering penance and reconciliation both with one's fellow brethren and with God.¹⁶ Consequently, both the metaphor of imprisonment and the "evolving structure of personal amendment found in early Christian experience" established the link between confinement and spiritual reform, thereby playing a pivotal role in the cultivation and eventual spread of punitive incarceration.¹⁷

Ecclesiastical concepts of discipline and punishment played an essential role in the development of punitive language that not only permeated the penal system of the medieval period from the fourth century on, but also comprises a large majority of the legal terminology used in today's Western judiciary system. Whether it was such terms as *carcer* ('pertaining to prison'), *murus* ('wall' or 'encellment'), or *ergastulum* ('jail of the cell'), religious precepts employed numerous words that are a vital constituent of punitive language.¹⁸ Words such as these were used in moral and legal precepts to solidify key principles within

¹⁶ Cassidy-Welch, "Incarceration and Liberation," 25-26.

¹⁷ Skotnicki, *Criminal Justice*, 74.

¹⁸ Edward Peters, "Prison Before the Prison: The Ancient and Medieval Worlds," in *The Oxford History of the Prison*, eds. Norval Morris and David Rothman, (New York: Oxford University Press, 1998), 26.

monastic and, more broadly, ecclesiastical sanctions, proclaiming the proper corrective procedures for transgressions and immoral behavior of monks and clergy. Thus, early monastic language set the precedent for carceral language.

With the rise of cenobitic monasticism, the need for a more intricate disciplinary system arose in an effort to combat erring monks and clergymen. Although canon law did not become well organized until the twelfth century, the formation of ecclesiastical law had an intimate relationship with monasticism and its disciplinary tactics. Andrew Skotnicki asserts “the most influential historical development that was to institute the prison as the basic disciplinary apparatus in the church and, by extension, in Western jurisprudence, was the institution of canon law.”¹⁹ One of the first papal letters that conveyed this was a fourth-century letter from Pope Siricius sent to Himerius, bishop of Tarragona. Addressing, among many issues, the transgressions and punishment of monks, this letter is considered an important contribution to canon law and one of the earliest documents to discuss confinement as a form of punishment for erring brethren.²⁰ The letter specifically considers sexual impropriety, proclaiming that those who err ought to be confined or locked away perpetually as their punishment. Pope Siricius employs the term *ergastulum*, which scholars interpret as ‘jail of the cell’ and is therefore referred to as one of the earliest references to

¹⁹ Skotnicki, *Criminal Justice*, 88.

²⁰ Peters, “Prison Before the Prison,” 26.

confinement as a punitive instrument.²¹ Furthermore, this letter became the first official decretal of canon law and was incorporated into Gratian's *Decretum* (also known as *the Concordance of Discordant Canons*), a compilation of canon law regarded as the fulcrum of ecclesiastical penology by the twelfth and thirteenth centuries.²²

The Fourth Lateran Council in 1215 marked an important shift in ecclesiastical penology. In particular, 'the great council' of the thirteenth century culminated in the official denouncement of ecclesiastical punishment involving blood sanctions. The prohibition of bloodshed restricted the type of punishments that could be executed and acted as one of the major precedents for the emergence of punitive imprisonment within ecclesiastical jurisdiction. By the thirteenth century, civil penology was proliferating in both power and severity and church officials were expected to discipline erring clergy and monks in equal measure to the laity. Because ecclesiastical punishment rejected any form of discipline that caused the shedding of blood, acts of punishing or coercive penance took on a new role within the confines of Church law, specifically monasticism.²³ Initially monastic confinement began as a voluntary practice, but evolved into a punitive procedure through its perceived outcome of contrition and the reform of the soul.²⁴ Although monasteries have seemingly employed confinement as a disciplin-

²¹ G. Cavero Domiguez, "Anchorites in the Spanish Tradition," in *Anchoritic Traditions of Medieval Europe*, ed. Liz Herbert McAvoy, (Woodbridge: Boydell Press, 2010), 92.

²² Peters, "Prison Before the Prison," 26.

²³ Peters, "Prison Before the Prison," 25.

²⁴ Johnston, *Forms of Constraint*, 19.

ary tactic for various offences since the early fourth century, it was not until the twelfth and thirteenth centuries that prison architecture became a mandatory component of almost all monastic orders throughout Europe. Differing in severity depending upon the crime, monastic punitive confinement was understood to produce two simultaneous outcomes: a compulsory penitential experience and the improvement of the soul.²⁵ Monastic prisons were used primarily to house apostate monks or clerics and, during the thirteenth century, began to implement perpetual imprisonment as a proportionate punishment for severe offenses, such as murder.²⁶ Ranging from ‘monastic quarters’ to the ‘penitential chambers’ depending upon the gravity of an offense, the monastery, and more broadly the Catholic Church, was “the first institution in the West to use imprisonment consistently for any avowed purpose other than detention as a practical way of handling disciplinary problems among all people within its jurisdiction.”²⁷ The monastic prison therefore emerged as a synthesis of penitential confinement, expiation, and spiritual reform.

Dating from the sixth to the fourteenth centuries, *detrusio* (‘a casting away’) was a procedure by which “ecclesiastical and secular lords could cloister non-monks.”²⁸ *Detrusio* can be traced to the emergence of confinement as a form of punishment within the monastery as well as its extension to civil society. Edward Peters reinforces this idea by noting that the

²⁵ Ibid., 21.

²⁶ Cassidy-Welch, “Incarceration and Liberation,” 24.

²⁷ Johnston, *Forms of Constraint*, 17.

²⁸ Guy Geltner, “*Detrusio*: Penal Cloistering in the Middle Ages,” *Revue Bénédictine* 118 (2008): 90.

concept of *detrusio in monasterium* ('confinement in a monastery') could entail "either living as a monk under normal monastic discipline or being held in a monastic prison."²⁹ The later often referred to heretics, laity, or clerical offenders who had not taken monastic vows, but were confined within the monastery to expiate their sins. Furthermore, Peters states that monasteries were the first organizations to use "confinement for specific periods and occasionally for life for the purpose of moral correction."³⁰ Paradoxically, monasteries were required to contain prisons and yet civil authority did not start to employ punitive imprisonment before 1250. Guy Geltner contends that the shift during the thirteenth century by which the use of imprisonment in a civil context spread rapidly is often explained as a "delayed adoption of the established ecclesiastical practice, and occasionally as a triumph of a Christian 'penology'."³¹ The ecclesiastical use of imprisonment as a form of punishment for erring monks, clergymen, and occasionally the laity was a pivotal development in western penology as it not only created the link between confinement and punishment, but also between prison and social reform.³² Similar to the practice of penance or confession, *destrusio* offered "sinners a genuine opportunity for spiritual relocation from the abyss of damnation to the threshold of salvation."³³ This illustrates that punitive confinement is both a byproduct of medieval western Christendom and that the ecclesiastical notions of penance and absolution

²⁹ Peters, "Prison Before the Prison," 27.

³⁰ *Ibid.*, 27.

³¹ Geltner, "*Detrusio*," 90.

³² Geltner, *The Medieval Prison*, 262.

³³ Geltner, "*Detrusio*," 94.

are at the core of medieval penology.

Ecclesiastical Law

Canon law permeated all facets of medieval society and canonists believed that they had both the need and duty to monitor the moral behavior of the community as well as recognize and control perceived patterns of deviance and moral transgression.³⁴ Unlike the modern perception that church authority and civil society ought to be heterogeneous, in the Middle Ages there was no solid boundary between ecclesiastical and civil society. There was no division between what the contemporary world perceives as the religious and the secular realms. In fact, the term ‘religion’ was not a common component of medieval language until its appearance in the thirteenth century when it started to be employed as a means for referring to those bound by either monastic or nonmonastic orders.³⁵ There was “no part of Christendom that stood outside of the holistic, sacralized order.”³⁶ Punishment therefore was intrinsically tied to piety, repentance, and atonement.³⁷ As Edward Peters states, “although salvation was a matter of individual virtue, there was no salvation outside the Church, and there was no legitimate

³⁴ James Brundage, *Medieval Canon Law*, (New York: Longman Publishing, 1995), 70.

³⁵ William Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict*, (Oxford: Oxford University Press, 2009), 64.

³⁶ Cavanaugh, *The Myth of Religious Violence*, 69.

³⁷ Mitchell B. Merbeck, *The Thief, The Cross and The Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe*, (Chicago: University of Chicago Press, 1999), 137.

society that was not Christian.”³⁸ The overall ethos of society was one in which the concepts of iniquity, piety, and the quest for eternity were deeply imbedded within all spheres of society.³⁹

Although ecclesiastical law and civil law were distinct legal systems, they had an interdependent relationship through their shared pursuit of creating and maintaining a pious society. Just as the laity could experience the practice of *detrusio* and be enclosed within a monastery, monks and clergymen could be transferred from either the monastery or church to the authority of civil society. The practice of ‘relaxing persons to the secular arm,’ which became widespread in the thirteenth century, specifically in England, allowed church courts to excommunicate its members so that they had to endure a more severe punishment under civil society. James Brundage explains how relaxing a person to the secular arm enabled civil authorities to “inflict upon the convict the more bloodthirsty measures available in their courts (such as amputation of limbs, branding, beating, and various forms of execution, some of them extremely savage).”⁴⁰ Both the concept of *detrusio* and the practice of the ‘relaxation to the secular arm’ acted as conduits for the convergence of ecclesiastical and civil jurisprudence. Although canon and civil law were ultimately two separate systems of governance, they conversed with one another, exchanging methodologies and procedural practices.

³⁸ Edward Peters, *Inquisition*, (Berkeley: University of California Press, 1988), 41.

³⁹ Brundage, *Medieval Canon Law*, 119.

⁴⁰ Brundage, *Medieval Canon Law*, 152-3.

The Fourth Lateran Council of 1215 culminated in the rejection of judicial ordeals and the establishment of the inquisitorial criminal procedure in ecclesiastical courts.⁴¹ The emergence of the inquisitorial procedure was not only a fundamental shift in criminal processes, specifically regarding conviction and sentencing, but also set the precedent for the establishment of the papal inquisition.⁴² Before the thirteenth century, the accusatorial court procedure was used extensively to handle criminal sentencing. The accusatory method sought to protect the person accused of a crime and followed the notion ‘innocent until proven guilty.’ Moreover, the accusatorial procedure required accountability on the part of the accuser if he or she had reported a false statement. The accusatorial procedure, with its origin in Roman law, sought to maintain a balance between the accused and the accuser, holding both accountable.⁴³ Conversely, the inquisitorial process (*per inquisitionem*) “allowed a judge to take action against a suspected offender *ex officio*, without any accusation or denunciation.”⁴⁴ In other words, the inquisitorial legal process favored the word of the accuser and sought to take action immediately. The accusatorial criminal procedure was publicized whereas the inquisitorial system became privatized,

⁴¹ Jean Dunbabin, *Captivity and Imprisonment in Medieval Europe, 1000-1300*, (New York: Pelgrave Macmillan, 2002), 153.

⁴² Brundage, *Medieval Canon Law*, 140.

⁴³ Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression from a Preindustrial Metropolis to the European Experience*, (New York: Cambridge University Press, 1984), 8.

⁴⁴ Brundage, *Medieval Canon Law*, 148.

convoluted, and deliberately planned.⁴⁵ According to Brundage, the inquisitorial procedure was a direct result of Pope Innocent III's effort to eradicate heresy and was a prelude to the establishment of the papal inquisition.⁴⁶

The rise in heresy throughout medieval society was a key impetus for the establishment of the papal inquisition. The inquisition was officially instituted by Pope Gregory IX and emerged in France, Spain, and Italy with the task to persecute and punish perceived heretics.⁴⁷ Although the implementation of the papal inquisition emerged officially during the first half of the thirteenth century, it started with the decree *Ad abolendam*, issued by Pope Lucius III in 1184, which declared that all "heretics and their believers, defenders, and favorers" were to be excommunicated.⁴⁸ It was the medieval papal inquisition that reinforced the employment of punitive imprisonment by bringing "this erstwhile clerical punishment into the urban public sphere through the wide-scale immuring of laymen."⁴⁹

An important "interrogation technique" of the papal inquisition, punitive imprisonment was the inquisitors' preferred method for combating heresy.⁵⁰ Imprison-

⁴⁵ Merback, *The Thief, the Cross and the Wheel*, 132.

⁴⁶ Brundage, *Medieval Canon Law*, 142.

⁴⁷ Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation*, (3rd ed. Oxford: B. Blackwell, 2002), 99-100.

⁴⁸ James B Given, *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc*, (New York: Cornell University Press, 1997), 13.

⁴⁹ Geltner, *The Medieval Prison*, 9.

⁵⁰ Given, *Inquisition and Medieval Society*, 53.

ment was understood as a way to purify and reestablish order within medieval society, specifically within the folds of the Church. Moreover, imprisonment was looked upon as an instrument for arousing confession and disclosure of information in regards to heresy. The inquisitors' use of the prison as a penal apparatus helped to thrust punitive incarceration into civil jurisprudence as it advanced the implementation of perpetual imprisonment for perceived miscreants.

The emergence of the inquisitorial prison by the mid-thirteenth century was a fundamental development that exemplified the rise in ecclesiastical punishment of the laity. A result of both the appearance of the inquisitorial courts and the rise in heresy, the inquisitorial prison extended the principles encapsulated within monastic penology, promoting its use through the idea of the "welfare of the soul."⁵¹ Soliciting penitence and spiritual reform, the inquisitorial prison was a mechanism for personal healing and communal resolution. Jean Dunbabin states, "the main intention of ecclesiastical punitive imprisonment, monastic, as well as inquisitorial, was to bring about repentance and reconciliation, a complete spiritual reformation."⁵² An explicit "punitive apparatus," the establishment of the inquisitorial prison was used as a tool for improving the character of the offender.⁵³ Through varying degrees of confinement, reformation of both the mind and the conscience were believed to occur. Although there are some ambiguities regarding

⁵¹ Johnston, *Forms of Constraint*, 3.

⁵² Dunbabin, *Captivity and Imprisonment in Medieval Europe*, 157.

⁵³ Johnston, *Forms of Constraint*, 26.

what life within an inquisitorial prison was actually like, Guy Geltner suggests that inquisitorial confinement “was modeled on the monastic penitential life, including solitude, long fasts, and prayers.”⁵⁴ Viewed as an intermediary between monastic and civil discipline, the inquisitorial prison helped to solidify the bond not only between punitive imprisonment and spiritual reformation, but also between ecclesiastical and civil penology.⁵⁵

The Birth of Purgatory

The concept of Purgatory had a paramount role in fostering imprisonment as a form of punishment in medieval society. Since the fourth century, purgation and imprisonment have been key components of the theological imagination. Self-imposed confinement was synonymous with purgatorial enclosure, as both were perceived to provide a means for obtaining spiritual purification.⁵⁶ Jacques Le Goff speaks of the long lineage of the concept of purgation and posits that although the idea of purgation has ancient roots, up to the twelfth century the “noun *purgatorium* did not exist: *the Purgatory* had not yet been born.”⁵⁷ By the twelfth century, Purgatory had become a “distinct space in netherworldy geography” that existed between heaven and hell, a sphere in which one could seek

⁵⁴ Guy Geltner, “Medieval Prisons: Between Myth and Reality, Hell and Purgatory,” *History Compass* Vol. 4, No. 2 (2006): 262.

⁵⁵ Geltner, “Medieval Prisons,” 262.

⁵⁶ Geltner, *The Medieval Prison*, 85-8.

⁵⁷ Jacques Le Goff, *The Birth of Purgatory*, trans., Arthur Goldhammer, (The University of Chicago Press: Chicago, 1984), 3.

contrition and reconciliation with God.⁵⁸ As an intermediary sphere of potential spiritual purification and reformation, Purgatory mirrors the concept of confinement, specifically penitential incarceration. Andrew Skotnicki states that it is not a coincidence “incarceration in purgatory emerged at precisely the same time that the prison was normalized as the means for both expressing social disapproval and encouraging the purification of the soul’s sinful elements.”⁵⁹ Imprisonment and the emergence of Purgatory were intimately connected, as the cell became a space of both “personal trial and eschatological triumph.”⁶⁰

Referring to Purgatory as a significant metaphorical and literal space within monastic orders, specifically the Cistercian order, Anne Muller states that the monastery “succeeded in bringing *purgatory* to earth in the twelfth century.”⁶¹ A central space integrated within the monastery, the cloister was directly connected to Purgatory, offering members both a specific location for purification and direct access to “obtain no less than the certainty of sin-free entrance to heaven immediately following their death.”⁶² Muller notes the paradox that these two imagined spaces, earthly paradise and Purgatory, were both situated within the

⁵⁸ Geltner, “Medieval Prisons,” 88.

⁵⁹ Skotnicki, *Criminal Justice*, 124.

⁶⁰ Geltner, *The Medieval Prison*, 84.

⁶¹ Anne Muller, “Presenting Identity in the Cloister: Remarks on Benedictine and Mendicant Concepts of Space,” in the *Self-Representation of Medieval Religious Communities*, eds., Anne Muller and Karen Stober, (New Brunswick: Transaction Publishers, 2009), 167.

⁶² Muller, “Presenting Identity in the Cloister: Remarks on Benedictine and Mendicant Concepts of Space,” 168.

confines of the monastery.⁶³

Similar to the cloister situated within the monastery, prison also became a space for spiritual contrition during the thirteenth century. This is exemplified with the rise in martyrological literature and first-hand accounts of the lives of prisoners and their spiritual revelations while incarcerated. The “spatialization of purgatory” was therefore an essential facet of the emergence of punitive imprisonment.⁶⁴ Purgatory became the bridge that linked the divide between ecclesiastical and civil disciplinary practices, as Purgatory not only became the intermediary between heaven and hell but also acted as the intermediary between the carceral language employed by ecclesiastical and civil jurisdiction. The prison as metaphor emerged and was construed as both “God’s great prison” and the “locus of spiritual purgation.”⁶⁵ By the thirteenth century, the relationship between confinement and purgation had come full circle with the emergence of Purgatory as a physical space as well as the extension of punitive imprisonment to the penal system of civil society.

The Municipal Prison

The emergence of the municipal prison in Italy between the late thirteenth and early fourteenth centuries illustrates the extension of punitive confine-

⁶³ Ibid., 168.

⁶⁴ Le Goff, *The Birth of Purgatory*, 201.

⁶⁵ Guy Geltner, “The Best Place in the World: Imaging Urban Prisons in Late Medieval Italy,” in *Cities, Texts and Social Networks 400-1500: Experiences and Perceptions of Medieval Urban Space*, eds., Caroline Goodson, Anne E. Lester, and Carol Symes, (England: Ashgate Publishing, 2010), 265.

ment beyond ecclesiastical jurisdiction. In 1298, confinement as a legitimate method of punishment was officially sanctioned by Pope Boniface VIII in the *Liber Sextus*.⁶⁶ This papal proclamation recognized punitive confinement as a legitimate punishment for ecclesiastics and officially extended it to the wider Christian world of civil society.⁶⁷ Endorsing the use of punitive imprisonment, Pope Boniface proclaimed that incarceration, whether temporary or perpetual, was an ideal instrument for both executing discipline and evoking penance.⁶⁸ Although corporal punishment was the common form of discipline used in civil society, by the late thirteenth century punitive imprisonment became a companion to the various rituals of public punishment that were implemented throughout medieval society.

By approximately 1250, punitive incarceration pervaded civil penology as “scores of city-states, capitals, and rural strongholds began founding such facilities and employing them as punitive institutions for sentenced culprits alongside their traditional role as places of custody.”⁶⁹ Before the rise of the municipal prison, civil jurisprudence used the prison as a holding facility for persons awaiting sentencing or the

⁶⁶ Peters, “Prison Before the Prison,” 29-30.

⁶⁷ Geltner, “Detrusio,” 89.

⁶⁸ *The Catholic Encyclopedia*, s.v. “Prisons.” Pope Boniface VIII states, “although it is known that prisons were specially instituted for the custody of criminals, not for their punishment, yet we shall not find fault with you if you commit to prison for the performance of penance, either perpetual or temporally as shall seem best.”

⁶⁹ Geltner, *The Medieval Prison*, 3.

liquidation of debts, not as a form of punishment.⁷⁰ In 1303, however, Venetian magistrates “introduced a formal calculus to convert fines into prison sentences, effectively legalizing penal incarceration for almost any offense.”⁷¹ The distinction between imprisonment as an instrument for detention and punitive imprisonment converged with the emergence of the municipal prison.

During the fourteenth century, the municipal prison had become a vital part of medieval society and was commonly located at the heart of the community.⁷² The medieval prison differed substantially from its modern counterpart both in its position within society and in its physical structure. Unlike the privatized penitentiary system today, the municipal prison was not removed from society, but functioned as a central facet of urban life.⁷³ The municipal prison was both centrally and visibly located and was often an appropriated or embedded structure incorporated within an already existing facility.⁷⁴ In addition, the municipal prison was not a closed system; instead, it operated as “spatial and temporal extensions of urban life, connecting free society back to itself.”⁷⁵ The municipal prison therefore did not directly marginalize its inmates as they had access to the outside world.

⁷⁰ Jay Cohen, “The History of Imprisonment for Debt and its Relation to the Development of Discharge in Bankruptcy,” *The Journal of Legal History* 3:2 (1982): 155.

⁷¹ Geltner, *The Medieval Prison*, 47.

⁷² Geltner, *The Medieval Prison*, 28.

⁷³ John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth Century England*, (Chicago: The University of Chicago Press, 1987), 29.

⁷⁴ Geltner, *The Medieval Prison*, 28.

⁷⁵ *Ibid.*, 81.

Incarceration was a prominent feature of European society by the late thirteenth and early fourteenth centuries and medieval jurisprudence had become an intricate, diverse system that dealt with criminality in more nuanced a manner than is often realized. The municipal prison had a different sense of deviance and criminality than the modern-day viewpoint. Rather than establishing the inmate as a liminal part of the community, the municipal prison did not necessarily change a person's social standing while incarcerated. Moreover, those within the confines of the medieval prison were often still considered citizens.⁷⁶ As a result, the municipal prison was a "place of punishment and detention whose walls operated as breathing membranes, not hermetic seals."⁷⁷

The birth of the prison therefore is situated within the late thirteenth and early fourteenth centuries when it evolved into a punitive institution. The emergence of the municipal prison not only demonstrates that prison is not an invention of modern penology, whether that be humanitarian reform or enlightenment thinking, but also that the employment of punitive incarceration by civil society is an extension of Church jurisprudence. Having emerged in ecclesiastical penology and migrated into civil law, punitive imprisonment ultimately is a product of the Middle Ages.

Conclusion

The origins of confinement as punishment began within the early traditions of eremitism and

⁷⁶ *Ibid.*, 83.

⁷⁷ *Ibid.*, 4-5.

anchoritism where individual solitude was used as a space in which both the expiation of sins and transcendence could occur. Whether it was the outside world or the confines of one's physical body that was perceived as the prison, confinement began primarily as an instrument for the development of the soul within religious life. Early forms of monastic living sought confinement as a space of spiritual liberation. Through the confinement of one's physical body, it was perceived that the soul was given full authority and could ultimately be in communion with God. Thus, early monasticism created the link between imprisonment and spiritual reform. "This supports the contention that criminal justice as we know it in the West is largely a Catholic innovation that began officially in the late thirteenth century but, in point of fact, began when the first penitent was relegated to a specific place for a period of time in order to accomplish the goal of spiritual and behavioral reform."⁷⁸ Not only did the cloistered life solidify the notion of imprisonment as a means for spiritual correction, but also the metaphors associated with it established the connection between confinement and the path to salvation. By the fifth and sixth centuries, cenobitic monasticism had spread throughout the Latin West. As monastic orders multiplied both in number and inhabitants during the twelfth century, the need for a new monastic disciplinary system appeared. Because ecclesiastical law rejected blood sanctions within its jurisdiction, a new disciplinary system emerged that implemented the practice of confining erring monks (for varying amounts of time) as a form of punishment. Evolving

⁷⁸ Skotnicki, *Forms of Constraint*, 90.

out of penitential encellment, punitive imprisonment was integrated into canon law while simultaneously cultivating the Christian ethos of penance, redemption, and reconciliation. As punitive confinement began to infiltrate the monastic disciplinary system, it became a common practice to confine apostate clergymen and even the laity within monastic cells as a form of corrective punishment. With the establishment of the papal inquisition, the employment of punitive incarceration proliferated. This practice acted as a vehicle for the transmission of punitive imprisonment into civil jurisprudence. The birth of Purgatory as a literal space reinforced the use of confinement as an effective means for both punitive action and personal purification. The intimate relationship between confinement and purgation that extends back to the fourth century converged with the formation of the municipal prison. Officially recognized as a legitimate constituent of not only the penal system of the Church but also of civil society in the late thirteenth century, punitive confinement had extended beyond its birthplace in monastic penology to the wider world of civil society.

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