authority. Such in theory often illegal, but in practice widespread, accepted and often court-evolved uses of prisons considerably complicated the imperial aim to narrow the function of prison to one of just preventive custody. In addition, they complicated the distinction between 'public' and 'private' imprisonment, to which we will turn in the next chapter.

CHAPTER 6

Private power and punitive confinement

In an attempt to define correct legal terminology to describe imprisonment, the early third-century jurist Venuleius Saturninus argued that the term 'chains' (vincula) could be used to denote both private and public forms of restraint. Custodia, he continued, was to be used, however, only with reference to publicly authorised containment.¹ This advice was certainly not heeded as even in the legal literature instances of confinement in private households, for example that of slaves, were often called custodia.² Nonetheless, with this statement Venuleius tried to make sense of the fact that there were other institutions apart from the state that had the power to address wrongdoing. Since his reasoning was included in Justinian’s Digest we must assume that it still mattered in the sixth century.

Non-state institutions with the power to punish concerned originally and predominantly the paterfamilias’ legal control over children, slaves and freedmen, which ruled real social relations even in the Roman provinces as evidence from late antique Egypt shows.³ A new category of people that came under the authority of elite Roman property owners in late antiquity were the tenant farmers who worked their estates, alongside slaves and wage labourers, which our sources call coloni. The origin of this dependency, its nature and its extent are quite obscure, a point to which I will return below. During the course of the late antique period, further non-state punitive authorities started to be recognised, such as, as we have seen in Chapter 3, that of the Christian bishop, but also that of monastic leaders. I subsume these under a label ‘private’ that, following Kate Cooper, defines institutions, practices and spaces that were not funded by public resources (but which were not, as the modern usage of the term would suggest, shielded from the public gaze or indeed out of the public interest).⁴

Prison and punishment

If we now turn to norms and practices of punishment in these various institutions, we will see that confinement played a role, as the jurist Saturninus implied. This deserves our attention, as it suggests that it was in domestic discipline, geared, as we have seen in Chapter 1, towards the values of ‘education’ rather than ‘retribution’, that spatial punishment was primarily and, contrary to the incidents described in the previous chapter, quite legally proscribed. This is not to say, however, that the lay or monastic household included formally designed prison space. In the lay household, forms of confinement were determined by the socio-legal status of offenders and their role within the family, which to some extent mirrored status-based attitudes to the legitimacy of public imprisonment discussed in the previous chapter. Domestic confinement, framed not as ‘prison’ but as seclusion from the outside world, exclusion from the central space of the house, or as segregation to a secondary domestic space, was an accepted way to discipline free members of the household, which Christian writers even encouraged as ‘educative’, particularly for women. Forms of confinement that resembled the public carcer, with severe restriction of movement, were, however, frowned upon in the case of free-born and freed members of the household, although, as we shall see, such methods were frequently used to compel behaviour in the private sphere, even beyond the context of the immediate household. Domestic imprisonment was considered reserved for slaves (the likely object of Saturninus’ comment) and, perhaps, fugitive coloni. Yet, the use of idle imprisonment in the case of unfree members of the household was not as common as sometimes thought, for it would have infringed on their ability to work and the main purpose of the punishment of unfree dependants, visible deterrence. Alongside beating, degrading work assignments, often in forms of confinement underlining the culprit’s status as outsiders, fitted the bill. Late antique monastic rules drew on these traditions of segregation and seclusion, but put an ulterior emphasis on the ordering of punitive space to facilitate penance.

Segregation and confinement of children and wives

As a matter of principle, Roman law expected parents, slaveholders and spouses to deal with defiance of their authority at home, within certain limits set by the law on physical harm. This did not only refer to disciplinary issues that were out of scope of public judicial proceedings, such as filial disobedience, but also included delicts such as theft and inuria, that is, verbal insult or bodily harm. The restrictions on bringing an action for such delicts extended to a patron against his freedmen, clients and labourers (which in late antiquity may have included coloni). Spouses also could not sue each other for inuria or theft. These restrictions were designed to safeguard the honour of the parents, slave-owner and patron, and the institution of marriage, which rested on the principle of marital harmony. They were also intended to underline the paterfamilias’ and slave-owner’s time-honoured authority to enforce domestic discipline, not to speak of saving the public courts a lot of work.

Legal and cultural norms concentrated on the paterfamilias when discussing domestic punishment. This does not mean, of course, that he was always the one meting out the punishment. Particularly where smaller children were concerned, mothers, grandmothers, teachers and slaves took part in instilling discipline, but for the law such power was merely delegated by the paterfamilias, or, if he had died and the child was still a minor, the guardian. In the case of rural slaves or tenants, geographical spread of landholding could mean that between foreman, estate steward and agents there were many layers of interaction. Even if masters were present during the castigation of a slave, they seem to have often handed over the actual task of punishing to subordinates. It is therefore important to remember that any uniform punitive strategy postulated on a theoretical level was not necessarily matched by reality with so many agents involved.

During the empire, the paterfamilias lost the right to kill a child in poststate (the so-called ius vitae necisque). Beyond this, however, the law had little to say about moderation or immoderation in the treatment of children in the household, perhaps drawing on a wider cultural consensus that parents would not treat their children unreasonably. As we have seen in Chapter 1, jurists, law-givers as well as classical and Christian moralists postulated that the purpose of punishment of young household dependents was emendatio. The methods of emendatio were varied. It could refer to verbal admonition, and particularly classical commentators on the education of children advocated a system based on rewards and privileges,

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6 See CJ 3.41.1 (25a); CJ 4.1.6 (287). See also Hillner (2001b), D 47.1.90 (89) (Paulus).
11 Thomas (1964) 501–548; Harris (1986) 81–96; Shaw (2000) 56–77, who argues that the ius vitae necisque had always been a cultural construct, never a legal right.
12 Hillner (2001b) 24.
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as much as on punishment. Yet, as we have seen, emendatio could also be thought of as a process based on the infliction of pain and humiliation, even in the case of free members of the household.

The Greek historian Dionysius of Halicarnassus (d. after 7 BC) explained in his Roman Antiquities, written to acquaint a Greek audience with the customs of their Roman rulers, that possible penalties inflicted by the paterfamilias could include imprisonment (πατεροκάστικη), chaining or forced labour. During the late republic and early empire imprisonment of children was sometimes recorded in literary sources. Seneca the Younger told the story of L. Tarius Rufus, consul suffectus in 16 BC, whose son had attempted to kill him. The father exiled the son to a property he had in or near Marseille. Seneca represented this as an alternative to death or career, and one that reflected the father’s clemency. The early imperial rhetoricians who composed declamation handbooks, usually in the form of two or more perspectives on the same case, also mentioned the imprisonment of children. Seneca the Elder, for example, had one of his orators suggest imprisonment for children who refused to support their parents, while in Calpurnius Flaccus’ Declamations the same was demanded for a son who had attempted parricide. The evidence of the rhetoricians is hard to assess. Their sole purpose was to present oral elaboration on complicated, controversial and colourful cases, without much regard for current law or custom.

Furthermore, it is unclear whether the career mentioned at least by Seneca referred to domestic imprisonment at the hands of a father or public imprisonment inflicted by a magistrate. Imprisonment in the public career may also have been implied in the incident involving Tarius Rufus. These stories suggest collaboration between paterfamilias and state, where the former had the choice between private and public punishment, even in cases that later came to be defined as public crimes. All, however, idealised fatherhood, and did not necessarily reflect social practices.

Already at the time of Dionysius of Halicarnassus, therefore, his description of children’s imprisonment at the hands of a father probably reflected a nostalgic memory of an ancient past. Whether discussed positively or negatively, evidence throughout Roman antiquity, including from the late

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Roman world, shows that, where painful and humiliating punishment of children was mentioned, it mostly concerned some form of beating. On the basis of the surviving evidence frequency of childhood beating is hard to measure and a matter of some debate among historians. Yet, it was certainly mentioned more frequently than imprisonment. Formal imprisonment, particularly where it involved the use of chains, was, perhaps even more so than beating, a treatment associated with submission of the body and hence slavery. Roman law, while emphasising their duty of obedience, prohibited even freedmen from being put in chains (vincula), so we can imagine that they were seen as morally highly dubious for free-born children, particularly of elite families. In the fictitious Acta Chrysanthi et Darius, a martyr narrative from Rome whose earliest Latin version perhaps dates from the fifth century, the protagonist, a young Christian, was ‘dragged’ (transierat) into the darkness of a prison (carcer) by his father, a senator and ardent pagan. For the purpose of the story, this action clearly marked the father, and hence paganism as a whole, as abusive and perverted, for he violated the natural father-child relationship based on pietas.

Conversely, some forms of punitive uses of space could be postulated as an alternative to beating. John Chrysostom, who in many ways echoed classical reservations about the appropriateness of beating children, advised the men of his congregation at Antioch that they should order misbehaving children, slaves or wives to retire to sleep without dinner. John reassured his audience, who might have been worried about such levelled treatment of different household dependents, that such disciplinary measures brought ‘no damage, but a gain’ (οὐχὶ ζημιὰν, ἀλλὰ κέρδος ἐφάπαξ). In John’s eyes, imposing fasting was a ‘spiritual’ act (τὰ πνευματικά), bringing ‘swift reform’ (καὶ ταχύτατα τὴν διορθώσεως), to be favoured over physical measures such as beating. He also advocated it in his treatise on the upbringing of children. However, withholding dinner also meant

18 Seneca, de elem. 1.1.6 (Loeb 402).
19 Seneca, Cons. 1.7 (Loeb 150); Calpurnius Flaccus, Declamations 4 (ed. L. A. Sussman (Leiden: Brill, 1994) 30–31). See also Quintillian, Inst. 7.1.54–7.1.16 (Loeb 38).
20 Bover (1949) 94–95.
22 See Gabbai (1968) 98–111.
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segregating culprits from the community of the household at the crucial moment of evening mealtimes, which for the free inhabitants of the house was a key occasion of convergence, and from the rooms dedicated to dining, which particularly in late Roman domestic architecture marked the centre of the house. In this way, it was a form of punishment with a clear spatial feature, even though commentators may not have wished to draw the parallel to formal imprisonment.

Spatial segregation was also the defining feature of a more severe domestic disciplinary measure for adolescent or grown-up children often mentioned in late republican and early imperial sources: the expulsion of children from the household itself. While under Roman law such expulsion (abdicatio or relegatio) did not lead to a termination of patria potestas and hence an exclusion of children from property succession, the Greek East knew a legal form of child expulsion, διτεωμοειτοκ, that led to disinheriting the child, turning this very child into a stranger to the household (τέωος). In 288 Diocletian prohibited the practice, calling it Graeco more, which shows that it was still strong in some provinces of the empire. It may have continued to be common also after this date. More regular, however, also in late antiquity, seems to have been the informal and reversible sending away of children, which was mentioned by both Augustine, who called it abdicatio, and by John Chrysostom. At least in the earlier sources, it was often conceived of as an order to reside at a rural property. For example, young Sextus Roscius, accused of parricide in 80 BC, had been sent to the countryside by his father. His lawyer Cicero tried very hard to make this look like paternal benefaction, rather than punishment, in his defence speech, in order to play down any potential feelings of revenge by his defendant. The purpose of such a measure was, as John Chrysostom put it in his De verbis apostoli — with a clear parallel drawn to the Scripture parable of the prodigal son — to make children return ‘chastened’ (γινομενόν διοφρονητησον). The severity lay in the social
disgrace that living in the countryside entailed due to its distance from an urban lifestyle as well as from access to paternal patronage. Augustine also explained that for parents it was a way to deflect shame from the family. As such, it displayed some parallels with the public penalty of exile, to which we will return in the next chapter. Again, it is hard to say how frequently such segregation to a secondary domestic space was applied, also because it was clearly only possible for families who had such space at their disposal.

The desire to restore correct moral behaviour as well as to protect a family’s honour by shielding the culprit from the public eye may well have led to this form of segregation being more frequently imposed on daughters than on sons. A famous example is that of Valentinian III’s sister Honoria, segregated on an imperial property after she had consummated a love affair with her estate steward. Although there was a certain overlap in this case between Valentinian’s role as Honoria’s closest agnate relative with a responsibility to restore domestic order, and his role as an emperor with a responsibility to restore public morals (the case was one of statuum, a public crime), his choice of punishment suggests that Valentinian was keen to be seen as returning his sister to the sheltered lifestyle that was traditionally expected of well-born girls in antiquity. Procopius of Caesarea eloquently described this ideal, deploiring the emperor Justinian’s choice of a former actress as a wife, rather than a woman ‘who... was... blessed with a nurture hidden from the public eye’.

Seclusion and surveillance were more frequently mentioned with reference to the treatment of wives than that of children. The institution of patria potestas assigned a peculiar role to wives. Under the most common marriage type throughout the time of the Roman empire a wife did not enter the potestas of her husband, but stayed in the familia of her own father or grandfather. Upon the death of her paterfamilias she would become sui iuris, literally meaning ‘in her own right’, with the power to hold property, including slaves, as would any adult who did not have a living ancestor in the paternal line. Ancient cultural conceptions, however, meant that wives were generally seen as subordinate to their husbands, which was

8 See e.g. Cicero, pro Sext. Rec. 11-17 (ed. F. Schoell (Leipzig: Teubner, 1923) 66-69); Livy, Roman History 7.4 (Lec. 168); Valerius Maximus, 5.43 (Lec. 496); here presented negatively; Orosius, History against the Pagans 5.16 (ed. K. Zangemeister (Leipzig: Teubner, 1886) 166-167). Although the latter wrote in the early fifth century, he described a case that occurred during the late republic.
17 Augustine, op. ad Galatas 39 (CSEL 8:108); John Chrysostom, de verbis apostoli, Habentem eundem spiritum 9 (PG 51:829); see also his de Anna sermo 1.3 (PL 54:556-557) though here he uses the term οντοστηρονοειτοκ.

30 Augustine, op. ad Galatas 39 (CSEL 8:108): malum enim filius non de his erubescere, eum parentem abdicaret silent.
31 Jordanes, Getica 224 (MGH AA ii.115); see also Marcellinus Comes, Chronicle ii.4.34 (MGH AA ii.279); John of Antioch, frag. 223.2 (Mariev 495) reported that Honoria was beheaded at a trusted courier on the occasion; see PLRE 2 Isula Grata Honoria, 168.
33 Procopius, Secret History 11.2 (Lec. 120): τροφῆς κριμαίου μεταλακασθον... .
perhaps even more pronounced from the fourth century onwards, when, due to Christian influences, the legitimacy of divorce came under scrutiny. In the late Roman East we also see the continuation of a Hellenistic legal concept at play, the husband’s guardianship over his wife.  

Late antique men expressed strong sentiments that the ideal environment of women, as that of daughters, was the home. John Chrysostom, for example, advised his audience that wives should not leave their houses unless they went to the church or the baths. Basil of Caesarea envisaged as one of the duties of married men to keep their wives under watch (γυναικας φρονειν). Augustine described in a sermon how an astrologer, after he had sold his predictions to his customers, went home and beat up his wife for as little as looking out of the window, even though his wife had told him that a stellar constellation had induced her to behave like this. Augustine’s point was not to claim that the woman had the right to look out of the window, or the husband did not have the right to compel seclusion. The point of the story was to ridicule the astrologer’s absurdity of believing in fate on a professional basis, but not seeing through in private. The story hence shows that wives were normally expected to spend most of their time indoors, at least in late Roman North Africa. Constantine issued a number of laws allowing wives to send representatives to court litigation, so that public appearance would not have to drag them from the seclusion of their homes and jeopardise their modesty (pudicitia). There is no doubt that both Christian and legal literature drew on inherited moral tradition that female chastity was best preserved through wives’ seclusion from the public gaze, which we have already seen manifest itself with daughters.

Such expectations were not necessarily matched by reality. Certainly, in a sermon preached as bishop of Constantinople in 402–403, John Chrysostom commented matter-of-factly that the weakness of women was not only due to nature, but – at least where urban women were concerned – also their lifestyle, for they were always sitting in the seclusion of their homes, like a tree in the shade. While still a priest at Antioch he had explained in a sermon that, conversely, women may be wiser than men, because they spend so much time at home. These remarks may indicate that domestic isolation was not only an ideal in late antique eastern cities. At the same time, the Western ascetic Jerome’s commentary on female life in fourth-century Rome demonstrates large freedom of aristocratic wives to appear in public with great ostentation. Both authors were of course tendentious, which makes it hard to generalise about any real custom. John’s and Jerome’s divergence may show that, as has been sometimes argued, there were more traditional customs of female domestic seclusion in the Greek east. Yet, Egyptian papyri bear witness to a great number of wives appearing in public, and, in particular in court trials, despite Constantine’s concern about their pudicitia, which defies any conclusion of large-scale ethnic differences concerning the behaviour of women. Still, because the association of wives and domestic seclusion existed, grounding a wife at home may have been seen as a suitable disciplinarian measure, to restore chastity and to shield misbehaving women-folk from public sight, in order to protect a husband’s honour. This may have been the case in particular when their misbehaviour could have also prompted public criminal proceedings in court, such as in the case of adultery. For Christian authorities, encouraging locking women away was also seen, again, as a way to steer men away from being as a way to exert control, this time over their wives. While they believed in subordination of women to men, and a husband’s duty to care for his wife and train her in right behaviour, late antique Christian writers did not, on the whole, approve of physical abuse of wives. Augustine represented keeping a wife at home if she had misbehaved as a good way to restore order in the household and contrasted it directly with flogging a slave-girl. He also called disciplining a wife emendatio, as such awarding a husband educational authority. John Chrysostom, as we have seen, advised men to exclude unruly wives from meals as a way to ‘educate’ them. The Council of Toledo, in 400, encouraged a remarkably strict treatment for unruly wives of clerics. If they had sinned, their husbands had the right to bind them in their house and, again, force them to fast and exclude them from spaces of

41. John Chrysostom, Homily on Hebrews 29.3 (PG 61:206); John Chrysostom, Homily on John 61.3 (PG 99:60).
46. Arjava (1996) 131, with references; see also Hillner (2003b) 31–45.
mealtimes. We should remember that the reason the council had been called was to deal with the Priscillian heresy and the issues it had generated for conventional, male authority through attracting a female following and promoting an egalitarian form of male and female asceticism. The council canon should therefore perhaps not be taken as representative of what later Roman men, or clerical men, thought about the punitive treatment of wives in general, but as a reflection of what Spanish clerics thought was needed to restore church order and clerical honour. Still, it is significant that a wife’s confinement was presented as the most appropriate measure to do so.

Archaeologists have long argued that it is difficult to discover any rooms specifically set aside for female members of the family in Greco-Roman domestic remains. This is either because we have not yet developed the necessary techniques to investigate the material culture of more invisible groups in the household, or because houses did in fact not have spaces segregated by gender, which at least for Roman houses seems to have been the case. At most spaces might have been screened off flexibly by using devices such as curtains. Despite the potential lack of female quarters that could double as spaces of confinement, some late Roman husbends seem to have been able to develop intricate measures of surveillance of their wives. In an emotional plea for the benefits of virginity over marriage, John Chrysostom reminded his listeners that employing his slaves as spies was customary behaviour of jealous husbands, which meant that wives lived in terror like in a prison (φυλακή), 'a captive' (δομήνων) in their own homes:

She cannot go out, she cannot utter one word, she cannot take one breath, without having to give account to her corrupt judges.

While John also admitted that not all marriage was like this, husbands encouraging friends or neighbours to spy on their wives in their absence was also mentioned by Augustine.

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48 Council of Toledo I (400), c. 7 (Vives 21-12): placuit ut si quisunque clericorum aliquor sacerdos percuterint, ne forte licentiam pecuniarum plurimum habent, accipiant mariti eorum sanean potestatem praeter innatuos curandum, legum in domo sua, ad iberniam solutarius non mancipio cogeret, . . . cum narraretur sacerdos utique pecuniarum nec alium bonum, ne forte ad iudicem Dei acta ponentur reverentiam.


50 On the potential lack of gendered space in the Roman household see Wallace-Hadrill (1994) 8–9; see Ellis (2000) 178 on the possible existence of women’s quarters in Greek houses; on the importance of analysing floor deposits to potentially identify gendered spaces see Morris (1998) 193–220. On the use of curtains to create gendered spaces see Weber-Schatz (2003) 97–112.


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Locking away wives inside the home could, therefore, also be represented as abusive behaviour. In the sixth-century Passion of Anastasia, a fictitious martyr narrative from the city of Rome, Publius, a pagan senator, imposed enclosure at home on his wife Anastasia, daughter of the vir illustrius Praetextatus. Anastasia had not only ministered to Christians in the public prison, but had also feigned illness to avoid conjugal relations. It is notable that Publius publicly charged Anastasia with magic and sacrilege, but then had her imprisoned at home. Perhaps this episode drew on customary house arrest for Roman elite women on criminal trial, an important measure, as we have seen above, for shielding them from the public gaze. At home, Publius denied his wife food and light, with a view to killing her, and, on leaving for official duty, trebled her guards; in short, he created public prison-like conditions. It was hence not the house arrest that was the issue in the story, but Publius’s abuse both of the domestic power that derived from his role as a husband and of his official power that he had been publicly granted as Anastasia’s guard. Despite her situation, Anastasia managed to smuggle out some letters to her friend, the Christian Chrysogonus. Chrysogonus now advised her to endure her condition and to follow the virtue of patientia. For the purpose of the story this turn of event, of course, underlined Anastasia’s suffering as the martyr that she was later to become, and also, as Kate Cooper has shown, was constructed to emphasise God’s rather than man’s role in her eventual release. It is, however, possible that it also reflected contemporary Christian views that a wife should behave submissively, even if her husband was clearly abusive, so as to attain eternal glory.

In a roughly contemporary Italian martyr narrative, the Passion of Nereus, Achillas and companions, possibly originally written in Greek, the pagan husband of the Christian heroine Domitilla, niece of emperor Domitian, shut her up in his house, ‘as if in a private prison’, the author was quick to emphasise, a fierce choice of words in a late antique context, as we shall see further below (infra parietes domesticos quasi in privato carcerem continet clausam). Domitilla was not allowed to receive any visitors, to see her parents, slaves, neighbours and even her own children. In this case, there is no attempt by a Christian authority in the story to rationalise such behaviour. Lesley Doxsey has argued recently that this narrative, with its
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Greek credentials, reflects that in Greek mentality isolating wives at home in this way, to shield them from any protection they might receive from the outside world, was considered scandalous, because due to endogamic marriage customs wives' relationships to the local community were much closer in the Greek east. In this sense, the message was very different from that of the Passion of Anastasia, although it should be noted that the Greek origin of this text is debated.\(^3\) In any case, the stories from the martyr narratives show that in contemporary perceptions there was a fine line between perfectly acceptable domestic seclusion and outrageous imprisonment of wives, and that, where it suited an author's purposes, the former could easily be presented as the latter.

The problematic consequences that some forms of wives' seclusion could have had are also visible in two real-life cases from late antique Egypt. In a fourth-century affidavit, which is usually interpreted as originating from a divorce lawsuit, a wife complained that her husband had not only taken some of her property and shut up her slaves, but had also threatened her with confinement by ordering his slaves to enlist men who could act as guards.\(^5\) In another papyrus, dated to the fourth or fifth century, a woman called Aurelia Attiana wrote to a tribune, Marcellus, with a complaint about her husband, who, when she sent him a notice for divorce because he lived with a concubine had not only shut her up, but had also raped her while in confinement, resulting in pregnancy.\(^7\) While the exact purposes of the documents are unclear, both women were probably seeking recovery of their dowries, an essential requirement for the preservation of female honour and the possibility of remarriage. Despite recent changes in divorce law under Constantine, which had prohibited divorce unless filed if the other spouse was a convicted criminal, divorce initiated by just one spouse continued to be widely practiced, particularly in the Eastern provinces of the late Roman empire, as it had been under classical Roman law.\(^8\) It should be noted, however, that even classical divorce law did not, on the whole, make it easy for wives. While it is difficult to generalise as much depended on the attitudes of individual judges, cases for the recovery of dowry met with most success if a woman could prove heinous forms of violence against her, such as flogging or whipping (verbera), that were, as a law from 439 explained 'unfit for the freeborn'.\(^9\) In both of the cases from Egypt, there had been some previous attempts by family members and the local clergy to reconcile the wives with their husbands. These mediators had probably tried to convince the woman in question that it was her duty to endure the travails of marriage.\(^6\) The decision to take the dispute a step further and involve a public court only came after the episodes of imprisonment, or threats of imprisonment. This means that, even by family and clergy, such actions by a husband were at times considered so serious that a wife was allowed to seek legal help.

The ambiguous position of a wife, as an adult with legal rights and a separate family background, but at the same time culturally subordinate to a husband, probably provided more scope for moralists to define correct behaviour of men, but also for wives to add their own voice in the debate. It is for this reason that we hear more about incidents of confinement involving wives than those involving children, either male or female. In all cases concerning free members of the household, it is clear, however, that domestic discipline could include or could be recommended to include spatial segregation, be this within the house, in particular exclusion from central spaces, such as dining rooms, or to a separate domestic space altogether. Such measures were justified by highlighting the deflection of shame from the core family unit and, particularly in a Christian context, the moral improvement of the individual concerned. Where such treatment exceeded an order just to stay indoors, especially where it included confinement in small and dark or underground places under guard behind walls instead of curtains, however, it was easy for those with an interest in discrediting whoever had imposed it to draw parallels with the treatment of slaves and with the public prison.

Imprisonment as a domestic penalty for slaves

Unsurprisingly, it is in the context of slave management that we hear most about formal imprisonment as a domestic penalty. Kyle Harper has recently argued that the way a late antique master treated a slave depended on many different factors, such as the tasks a slave performed, the gender of slaves and physical proximity between master and slave. As a consequence, there is no way we can generalise on techniques of slave domination, which

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43 P. Oxy VI 905. See Bagnall (1987) 41-46.
45 Bagnall (1987) 33; Cooper (2007b) 159-160 for discussion of these papyri see also Bryen (2003) 179-182.

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customarily included incentives as well as punishment. At the same time, it is clear that where slave punishment was advised and administered its focus was on visibility, exemplarity and deterrence. Furthermore, masters seem to have been commonly concerned not to impose punishment that infringed on a slave’s productivity. Although we cannot draw any firm conclusions about the frequency of imprisoning slaves, it certainly played a role within this system, but its function was diametrically opposed to imprisonment of freeborn members of the household. Rather than shielding a culprit from the public gaze to protect the family’s honour, confinement of slaves meant to highlight bodily submission and was usually connected to work.

Although agricultural slavery persisted in late antiquity, we know most about the punishment of urban domestic slaves, mainly because our most extensive sources on slave management from the late antique period, Christians’ moralising preaching about slave treatment to an urban audience, usually addressed the immediate level of interaction between masters and slaves in the house. Within the urban context of slavery, the predominant kind of punishment was whipping, the most ordered and direct submission of the body and, as we have seen in Chapter 1, at the heart of an ancient understanding of pain in the learning process of those considered ignorant due to age or status. Slaves should fear their masters; this would ensure their obedience and docility. Christian authors developed the theme, as they endorsed existing social hierarchies, even where they consoled those at the bottom of society, the poor and the unfree, that their price of salvation was nigh as a result. Masters were urged to minimise cruel treatment, but not to give up painful punishment altogether. The trick was to administer such punishment with the correct emotional attitude, without anger or passion.

In two laws, from 319 and 326/9 respectively, included in the Theodosian Code under the heading De emendatione servorum, Constantine assured masters that they did not face a murder charge if a slave had died as a result of the exercise of potestas domestica with the aim of correction (correction). Among forms of correction that were considered acceptable and ‘impassionate’, were beating with whips or leathern scourges and prolonged submission ‘to chains for the sake of custody’

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68 (custodia causa in vincula). A similar view on homicide charges for slave killing was already expressed in the Sententiae of Paul of the time of Diocletian, so Constantine seems to have replicated a legal tradition here. If we take these laws as indicative, we can conclude that vincula were indeed a common slave punishment, for Constantine certainly meant to clarify slave masters’ and judges’ confusion in the face of legal interventions against maltreatment of slaves over the course of the second and third centuries. Indeed, after flogging, placing a slave in vincula or its Greek equivalent δεσποινο is the most arrested form of slave punishment also in literary sources, and chains were often presented as a conspicuous symbol of slavery. Vincula and δεσποινο are, however, not unequivocal terms. As we have seen above with reference to the public penal process, they were umbrella terms denoting imprisonment itself; forced labour (that could also be accompanied by enrichment) or simple confinement. Where slave punishment is concerned, we cannot automatically assume, therefore, that chains also meant spatial confinement, as has sometimes been done. In an elaboration on the necessity to patiently endure worldly existence, Basil of Caesarea gave an insight into the types of penalties that could be imposed on a slave:

Are you a slave? Even then there is always someone below you. Give thanks that you are placed above someone, that you are not condemned to the mill, that you are not flogged! But even this one has occasion to be grateful. He

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66 CTh 9.12.1 (319) = CJ 9.14.21 CTh 9.12.2 (326/339). Forms of punishment that were not deemed ‘corrective’ were: beating with clubs or stones, inflicting a fatal wound with a weapon, hanging, poisoning, throwing a slave from a high place, public laceration of the body with iron hooks, and burning or amputating limbs. See also Gaius, epist. 1.3 (FIRA 12435); sed distinguendi in servos dominus pro sua potestate permissionis; accidit tamen servus tuae domus licentiam non habeant, nisi fuerit servus, dum pro culpae modo castraveris, caus feriarum moriaritut, which clearly reflect this legislation. Further comment see Lusardi (1999) 174-176.
67 Paul Silentiarii 5.12.6 (FIRA 8:408): servus a plagis defecturus, nisi id dolo fuerit, domini suoi licentiam non posset postulare; medium enim castigandi et in servorum exercitio placitum tempereret. Note, however, that theServant also have textual layers that include subsequent late Roman law, so it is not always possible to distinguish between Diocletian and later influences. See Lips (1899) 129-137.
68 For an overview of Roman law on slave maltreatment see Buckland (1908) 38.
69 The evidence for this type of punishment is vast and originates from across the late Roman empire. See, for example: Ambrus, Leg. sect. 5.15 (CSEL 33, 2, 173); Augustina, City of God 24.11 (CSEL 11359); Claudian, in Ex. 3.254-254 (ed. J. Koch (Leipzig Teubner, 1893, 79): John Chrysostom, On Virginity 4.21 (SC 157:386-398); John Chrysostom, Homilies on 1 Corinthians 40.5 (PG 61:354). On the symbolism of slave chains see Harper (2001) 231.
70 See above Chapter 3.
71 See Mournitz (1899) 362; Mayer-Mal (1957) 324. The latter analysed the directive in early imperial legal sources to hand slaves publicly convicted for a minor crime back to their masters sub poena vincularum, which ensured both their punishment and prevented economic loss for the master.
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their slaves with prison in a dark place (carcer, claustra poenalia, custodia tenesbra) or chains (vincula). Furthermore, they should fashion their behaviour after the example of the Christian emperors who, in this very period of Easter, were in the habit to ‘release from chains’ (vincula solvantur). The reference to imperial amenities at Easter, however, raises the question whether Leo was here describing actual practices of punishment in the household, or whether carcer et vincula was not simply a phrase believed to aptly underpin a discourse on clemency modelled on imperial conduct and public penal processes.

A more realistic picture was drawn by Augustine, in a sermon on the necessity to do good not out of fear for punishment, but love for God. A slave, he argued, usually altered behaviour only out of fear, for he did not love his master. Among the types of punishment inflicted on the trembling slave, Augustine mentioned flogging (verberare), chains (coppedae), prison (carcer) and condemnation to the flour mill (pistrinum). It may be possible that Augustine was here following a customary view on these penalties as being gradually more severe. John Chrysostom mentioned imprisonment in a δεσμωματιον as a penalty for theft by a slave. This comment was part of a sermon on woman’s shameful attachment to clothes and jewellery. If a slave stole one of these objects, women were prone to have the whole household whipped or imprisoned. John clearly disproved of such behaviour and expected the men in his audience to do so as well. This may mean that John, and others, thought imprisonment should be reserved for serious misdeeds, rather than trivialities, matters that only women became agitated about. Elsewhere, in fact, drawing a parallel between God and slave-masters, John told of the master who had rightfully thrown his slaves into prison (δεσμωματιον διδαλλοντος) for many great offences (τιμλα και μεγαλα διασωματα). Among such misbehaving slaves clearly were those who tried to run away, for whom John suggested there was no other remedy than locking them away. In reality, of course, the reasons to imprison slaves could have been myriad. A slave, John Chrysostom said, may be locked up to teach other slaves how not to

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behaved. They also claimed that slaves were imprisoned for spying on their masters, while, in turn, the abusive husband from fourth-century Egypt mentioned above incarcerated his wife’s slaves and his own to test their loyalty.

Despite the terminology of *carcer* and *διοικόστρωμα* (provided that these do not refer to sending slaves to the public prison), there is little evidence that urban houses had a formal, designated prison space for unruly slaves in late antiquity. Rather, existing spaces were used flexibly for slave confinement. In his sermon *About the Statues*, meant to deter his Antiochene community awaiting imperial property confiscations for rioting in 386 from too close attachment to their elusive wealth, John Chrysostom aroused an image familiar to his audience, of a fugitive and recaptured slave, who simply could not be secured:

Should you throw over him ten thousand chains, he will make off dragging his chains after him. Frequently, indeed, have those who possessed him shut him up with bars and doors (μυχόπος ἐκ Θόραις), placing their slaves round about for guards (φύλακας). But he has over-pressed these very servants, and has fled away together with his guards (γάμον συμπερτότους); dragging his keepers after him like a chain, so little security was there in this custody (φύλακας). 82

John Chrysostom’s description makes it clear how much giving occasion to other slaves to observe and punish owned to the extent that they allowed for much communication between detained and other slaves and hence compromised the prevention of the formers’ escape. This suggests an informal use of space, rather than a formal ‘house prison’. There may have been numerous places in the late Roman house where facilities for confinement of slaves would have been found, although it is perhaps most likely that underground spaces were used where possible, not necessarily to prevent escape, but to be able to remain out of sight. Roman domestic buildings were often serviced by slaves through semi-subterranean underground corridors, cryptoporticoes, which created a unique ‘upstairs—downstairs’ scenario where the serene world of the free-born household was manifestly set apart from the dark and dirty world of slave labour. We can imagine that domestic punitive methods sought to exploit this marked distance between the free and the unfree by

condemning misbehaving members of the latter to remain in this slave environment for lengthy periods of time, which, at the same time, did not infringe on their ability to perform work. The husband from Egypt shut his own and his wife’s slaves up ‘under the ground’ (ἐν τῷ κορύσσων), and John Chrysostom at times seems to refer to underground imprisonment of urban slaves.

To be sure, up to the fourth century the term *ergastum* appears in sources describing slave management, which has at times been taken as referencing domestic prison space. However, the term more likely indicated either a group of rural slaves working together, and therefore chained together during day-time, or the space where these slaves were held at night. Every estate, the first-century agricultural writer Columella suggested, should have such living quarters, distinct from those of the unfettered slaves. It should be underground, but not window-less, so as not to endanger slaves’ access to fresh air. Such architectural prescriptions were, however, purely idealistic, as the complete lack of archaeological evidence for comparable spaces confirms. As Annalisa Marzano has recently argued, there never seems to have been any systematic building of prison-like barracks in the architectural history of Roman villas. There was hence, true to the origin of the word from the Greek *ergasterion* (workshop), a strong connection between *ergastum* and labour, for the emphasis was not so much on the spatial and custodial issue, but on management of a workforce through chaining and housing them together. The primary use of the term was not with reference to punishment, but to the exploitation of slave labour on large estates.

This does not exclude, of course, that putting a slave with a group of rural fettered slaves who were assigned to the same task and held together over night could be a form of punishment, also in the late antique period.

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81 John Chrysostom, *On Virginity* 52.7 (SC 15:296); P. Oxy. vii 901.
82 On cryptoporticoes see Marzano (2007) 150. At 153 Marzano mentions a find from an underground storage room at a Pompeian villa of a skeleton with a neck collar, which the interpreter as a slave put there for punishment.
83 P. Oxy. vii 903; John Chrysostom, *Against the Jews* 5.5 (PG 48:891).
84 Dunbabin (2005) 21–24. This interpretation hinges mainly on the use of the term *ergastum* in early medieval monastic literature, see further below Chapter 8.
86 Columella, *De re rustica* 1.6.3 (Loeb 66).
89 Pavlo Torrejón (2003) 210. See Seneque, *De ire* 3.11–3.12.3 (Loeb 332) on masters’ customary habit to condemn to *ergastum*, which he, for once, criticised. See also Livy, *History Roman* 7.4.4–7.4.5 (Loeb 368): a critique of the dictator of 362 BC, Lucius Manlius, for having sent his son to an *ergastum*, apparently one of his rural properties.
Still in the early fourth century, Lactantius explained that a fugitive slave deserved 'lashes and chains (vinculis) and ergastulum and crucifixion (cruce) and every type of punishment'. It may also be possible that when John Chrysostom mentioned an urban slave being condemned to a θησαυροῦρον, he envisaged transfer to a rural group of fettered slaves, for θησαυροῦρον may have been the Greek equivalent of ergastulum used in this sense. At least in the late antique West, large estates that predominantly ran on slave labour continued well into the fifth century, perhaps due to low population rates that made wage labour, common in the East in this period, impracticable. The archaeological record shows a widespread use of footshackles on third and fourth-century imperial estates in Northern Gaul that may indicate a use of slave-gangs, although, again, there is little evidence that these slaves were housed in purpose-built barracks, underground or otherwise. It may hence well be that Lactantius recommended enlisting misbehaving urban slaves into this rural workforce.

While not explicitly using the term ergastulum, many further late antique commentators on slave-life also mentioned the transfer to rural work as a customary punishment. Late Roman slave-masters, as their classical predecessors, usually had their slaves organised in a hierarchy of labour, which may have been based on skills (such as the ability to read and write in order to manage financial accounts or literary tasks, or the knowledge of a certain craft). Such hierarchy could be reshuffled according to behaviour. A domestic slave in charge of his master's wardrobe, for example, could be made to guard the door of the house upon having committed an offence, or even to clean the sewers of the house, a most blatant form of degradation. Often, however, misbehaving slaves were sent to work on the rural estates of the master. We hear about this practice mostly in the context of the provincial curial ranks, which made up the listeners of many late antique bishops' sermons, such as those of Augustine, John Chrysostom and Basil of Caesarea. Their landholdings lay close to the

91 Lactantius, Div. Inst. 5.18 (CSEL 19.1:460): verberibus et vinculis et ergastulo et cruce et omnibus male ditionemosa indicatur.


95 Cleaning the sewers: Augustine, de libero arbitrio 1.55 (CC 22.929-930); doochecming: Augustine, en. psalm. 103.240 (CC 201350). On the hierarchy of labour see Klein (1988) 177-180. Urban slaves threatened with being sent to the country for punishment are also mentioned in previous centuries: Horace, Sat. 1.7.128 (Loeb 234); Juvenal 8.879 (Loeb 138), using the term ergastula: D 8.5.36.3 (Uplain).


98 Harper (2010) 138-139. It is not clear, however, whether slave work involved turning mills, in addition to loading and emptying mills, and possibly producing the bread.

99 Augustine, ep. 185.51 (CSEL 17.34); tammu anamae practicae. Procopius of Gaza, comm. in Isaiam 76 (PG 87.2.440-441); see Harper (2001) 138.

100 Gregory of Nyssa, bapt. diff. (PG 45.428): ἄθτομον ἀποθέσα τινὸς παράδοσης χωρίς ἀδίκου και ἀνευρέτου και μητέρως, ἠθικά ὑποτάσσει τοῦ τοιούτου ὁμολογοῦμενος.

101 Nathan (2000) 177. Branding of slaves was prohibited in late antiquity, but still practiced. Gradually it may have come to be replaced by the assignment of inscribed neck collars; see Hillner (2001) 193-216.
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house prison with nothing to do would not have fulfilled the purposes of domestic slave punishment: visibility and deterrence on the one hand and the safeguarding of slaves’ ability to work on the other. The same can be said for the management of coloni, to which we will now turn.

‘Private prisons’, ‘estate prisons’ and the late antique colonate

In a classic article published in 1968, Olivia Robinson investigated late antique laws that prohibited so-called ‘private prisons’ (carceres privatis). She came to the conclusion that such institutions were a widespread phenomenon across the late Roman countryside, linked to the rise of large estates that characterised rural regions in this period. They were both a consequence of the weakness of the late Roman state vis-à-vis great landlords and of rural troubles such as brigandage and wandering heretics, which allowed but also forced estate owners to take the law into their own hands. These conclusions were much indebted to Edward Hardy’s seminal book The Large Estates of Byzantine Egypt (1931). On the basis of papyri evidence mainly from Oxyrhynchus and the so-called archive of the Apion family, which, at the time had only just begun to be examined, Hardy had argued that, at least in Egypt from the fifth century on, the authority of the great landowners started to eclipse that of the state in a ‘semi-feudal’ manner. The main focus of Hardy’s work was the alleged failure of estates like that of the Apions to pay taxes, their reliance on rent-returns from tenants (colonii) bound to their land like serfs, and the resulting autarkic nature of their estate divorced from urban economy and trade. One aspect of this scenario was landowners assuming a judicial role, to settle disputes among their tenant-serfs, and to combat social misconduct in the local community, and for this, Hardy assumed, they maintained prison facilities. According to Hardy, a number of late antique papyri mention such an ‘estate prison’ (φυλακή), and this may be the same as the carcer privatus referenced, and prohibited, in imperial law of roughly the same period.

Building on Hardy’s approach, Roger Rémondon assumed that the discrepancy between the vision of an ordered society that transpired from late antique laws, including that on the prohibition of carceres privati, and the disordered realities of landowners evading taxes as well as keeping their own armed forces and prisons was only superficially contradictory. The state, while rhetorically prohibiting it, tolerated such behaviour as it

allowed, when needed, the mobilisation of landowners’ resources for public purposes, for example the maintenance of law and order. Jean Gascou developed this perspective in an influential article published in 1985, by arguing, in direct defiance of Hardy’s ‘semi-feudal’ model, that the association of the rural population as tenants to a landed estate, which became responsible for collecting their taxes, was a successful imperial strategy to harness private power for public benefit, a form of systematic imposition of a liturgy that turned the estate into a ‘semi-public’ institution and saved public expenses. Rather than usurping legal power, private prisons were part of this system, as they indirectly helped the state to combat crime, with a function equivalent to the public prison. It needs to be stressed that Hardy considered the evidence from the papyri to be inconclusive, even where he thought that the laws pointed strongly in the direction of ‘estate prisons’. Nonetheless, his interpretation and its elaborations by Robinson, Rémondon and Gascou of the role of private prison in estate jurisdiction has had a noticeable influence on historiography until very recently. The connection between the φυλακή of the papyri, the carcer privatus of the law, and the alleged light they shed on the role of estate owners in the combat of crime in the countryside, however, has also begun to be revisited. As I will argue, the laws that prohibited private prisons concerned entirely different phenomena of ‘imprisonment’ than those mentioned in the papyri, which were perfectly legal institutions. Furthermore – and here I will build on Jens-Uwe Krause’s excellent work – neither laws nor papyri concerned the use of prisons in private criminal jurisdiction against coloni. Rather, the purpose of carceres mentioned in the laws was mostly to coerce debt or other forms of financial benefits. The purpose of the ‘household-φυλακή in most papyri was custody (though perhaps not technically imprisonment) of a particular type of tenants, the coloni adscripti, in order to safeguard tax liabilities. Neither carcer privatus nor the φυλακή of the papyri, however, are likely to have referred to a physical space on estates routinely and exclusively used for imprisonment that would merit a label ‘estate prison’.

The earliest late Roman law to mention carceres privati was issued by Theodosius, Arcadius and Valentinian II and addressed to the Prefect of Egypt. It declared that sending an accused person (rews) to a private prison

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(carcerem privatae) was an act of treason. Two further late Roman laws on private prisons are known. The first one, which Zeno addressed to the Praetorian Prefect Basilius in A.D. 486, prohibited anyone in Alexandria, Egypt, or elsewhere in the empire 'to impose custody in a private prison either on his estate or in his house' (vel in agris suis aut ubicunque domi privatia carceris exercere custodiam) and, again, equated this to treason. In 529 Justinian renewed this constitution, with a clear reference to Zeno's previous law. He also published Zeno's law, but not Theodosius', alongside his own in his Code. Whether in town and country, private prisons (îδιων ικανών πολιτών) were prohibited, and anyone putting someone into a private prison for a time was to be punished by being sentenced to detention in the public prison of equal length.

The term rerum in Theodosius's law may suggest that here the private prison was envisaged to play a role in a formal judicial process, where someone had been publicly accused of a crime. This could mean that the original issue of the law, which was heavily truncated by the editors of the Theodosian Code, and its reference to 'treason', probably need to be seen in the context of other fourth-century laws, discussed in the previous chapter, that barred imperial, military and civic officials without judicial competences from holding defendants. As far as the law was concerned, such un-authorised prisons may have been considered 'private'. This is shown by the (possibly) late fifth-century Edict of Theodoric, which certainly followed Roman legal terminology, and also prohibited custody imposed by an official without decree of a magistrate (ius dicere), calling this privata custodia. The object of Theodosius's law may therefore have been neither the role of private individuals acting as illicit judges, nor the same as that of Zeno's and Justinian's much later laws, but illegal prison facilities within the imperial administration. In the case of Zeno's and Justinian's laws, Jens-Uwe Krause has convincingly argued that they dealt with coercive imprisonment, in particular of debtors, for Justinian explained that those running a private prison would lose any financial claims against those imprisoned. Zeno and Justinian seem to have primarily reacted to the situation in Egypt, presumably because they had been alerted to local circumstances there. We hear indeed much about such circumstances from Egyptian papyri. For example, in 568 a widow from Antinoopolis, called Sophia, asked the dux of the Thebaid for help against a man who had confined herself and her child for unnamed reasons, but probably involving the inheritance from her husband. Both Zeno and Justinian, however, sought to extend their regulations to the entire empire, perhaps because they knew that private coercive imprisonment was an endemic problem.

Many sources indeed confirm that coercive imprisonment in private spaces, as much as in public prisons discussed in the previous chapter, was rife throughout the empire, for a variety of reasons. It is recorded, for example, in the spectacular fraud case of Antoninus, bishop of Fussala and Augustine of Hippo's former protégé. Antoninus made the estate steward of the church of Fussala detain a man in private imprisonment (custodia privata) to force him to sell the bishop his land at a price below its real value. Ammianus Marcellinus told of fourth-century Roman senators who confined their debtors like slaves until they paid up. Also in Rome, in 384, the senator Fulgentius had called on two agents in rebus to detain in his own house a trial witness against himself. John Chrysostom in one of his sermons condemned the creditor who without mercy pursued his debtors, seized them and imprisoned them, and even imprisoned those who did not owe him anything. Callinicus, the hagiographer of the fifth-century holy man Hypatius of Bithynia, narrated the story of the imperial chamberlain Urbicius who asked Hypatius to cure a man, Aetius, who had been confined and driven insane by Urbicius' brother. The circumstances are unclear, but since Aetius was wealthy and ultimately left his property to Urbicius, we can imagine that behind his imprisonment were questions of inheritance. Procopius accused the emperor Theodora of keeping a private prison in her palace, in 'concealed' rooms (ἐπικόπτων κοσμίων) which were completely hidden, dark and isolated, and where she sent those who insulted her without trial. This accusation was particularly scathing, as Procopius and his audience must have known quite well that Justinian

P. Calr. Masp. 1 67009 (ca. 168); see also P. Grec1. 7 128 (167); for comment see Byren (2013) 119–120; F. Albinus, 51–52 (346); for comment see Byren (2013) 99–100; P. Lond. v 180 (fourth century). Ammianus Marcellinus, Roman History 25.4.35 (Loeb 155–155). He probably refers to a case where a defendant voluntarily became the accuser's debtor in order to avoid a criminal trial.

Symmachus, Relatio 23.8 (Barrow 130) and see Harris (1999) 113.

John Chrysostom, Homily on John 67.2 (PG 59:372). He used the term ἐπιστρέφει, which suggests private imprisonment.

Callinicus, Life of Hypatius 12.4–12.5 (SC 177:116); see P. RE II Urbicius 1, 1189.
himself had prohibited such facilities.\textsuperscript{19} Not all of these stories need necessarily be true; yet, they show that imposing private imprisonment could be mobilised as a distinct literary motif to frame utterly abusive and inept behaviour of the powerful, including, as we have seen above in the context of wife and children, at the domestic level.

If we want to look for a contradiction between the norms promulgated by the laws and the situation on the ground, as postulated by Rémondou, private imprisonment certainly presents a case. It continued to exist despite the repeated attempts to ban it. At the same time, there is little evidence that late Roman authorities universally condoned private imprisonment. As the papyri show, people in late Roman Egypt knew that, under the right circumstances, they could get help against such illicit behaviour, even if it was a cumbersome process. Furthermore, coercive imprisonment for debt or extortion of money or land was not new and had little to do with the rise of great estates.\textsuperscript{120} It had long been established that a public charge could be brought for coercive private imprisonment under the \textit{Lex Iulia de vi}.\textsuperscript{121} As the second- and third-century jurists had specified under the \textit{Lex Iulia}, any claim to property seized through confinement was void.\textsuperscript{122} These discussions among jurists show that private individuals had been separating each other up long before the fourth century. The issue of debt was a little more complex, for, as we have seen, archaic Roman and Hellenistic law had allowed for debt bondage.\textsuperscript{123} The late antique laws on private prisons, certainly those of Justinian and Zeno, sought to combat such persistent customs. As such, they had little to do with formal private criminal jurisdiction from which the state could have benefited.

Let us now turn to the papyri mentioning a household-\textit{φυλακή}. These present an entirely different scenario, not the least because they give the impression of a formal and legally regulated use of private prisons. Our largest evidence for alleged 'estate prisons' in late antique Egypt derives from a series of papyri presenting a so-called deed of surety (\textit{γυγόν}).\textsuperscript{124} These documents, dating from the fourth to the seventh centuries, were contracts between a landholding household and a third person who provided financial insurance that a barrister would remain on and work a piece of this land and pay the taxes (or possibly rent) for which he was liable. Some of these documents, though not all of them, also ordered those who gave warranty to collect the labourer from the \textit{φυλακή} of their landlord's household (\textit{φιάκος}), and to return him there when ordered. These latter, mostly dating to the late sixth and seventh centuries, and mostly originating from the Apion archive and the Oxyrhynchite nome, are usually interpreted as documents that established bail for fugitive, re-captured, and confined \textit{coloni} and arrangements against a potential second escape.\textsuperscript{125}

The appearance of the term \textit{ἐν τῇ φυλακῇ} in these deeds of surety, could, of course, be connected to the rise of more complex large estates in fifth- and sixth-century Egypt, which also, in reflection of their social role, may have started to have formal prison space. It is reasonable to conclude, however, that it is also and perhaps more importantly connected to the simultaneous appearance of the \textit{georgoi enapographoi}, or, as they are called in contemporary laws, \textit{coloni adscriptici}, a particular type of tenant in the late antique countryside from the fifth century on.\textsuperscript{126} Both traditional and recent scholarship has extensively discussed these. Without going too much into the details of this complex debate, its results may be briefly summarised here, to better explain the meaning of the term \textit{ἐν τῇ φυλακῇ} in the deeds of surety.

From the fourth century on, legal, documentary and narrative sources register a category of late antique people called \textit{coloni}, who appeared to be fiscally bound to the land they were working. Historians largely agree that their appearance in the sources was linked to the fiscal innovations under Diocletian and Constantine. These innovations demanded permanently tying each individual to a place of tax registration with a view to suppressing mobility and hence increasing tax return. For rural labourers, this place of tax registration on many occasions seems to have become the estate of their land-owning employer. The processes under which this happened are not very clear and are at the centre of the debate. Some scholars argue that the late Roman state compelled rural workers to register through a local landowner. Other historians conclude that the state came only to retrospectively institutionalise and regulate private relationships between rural workers and their landlords that may have reached back to social dependencies during the principate, or may have come into existence through contractual arrangements.\textsuperscript{127}

\textsuperscript{19} Procopius, \textit{Secret History} 3.31–3.29 (Loeb 38–40).
\textsuperscript{120} On the following see Krause (1996) 61.
\textsuperscript{121} D 48.6.6 (Ulpian); D 4.1.22 (Paulus) and \textit{Pauli Senatusate} 1.7.8 (FIRA 12327); 5.6.14 (FIRA 12359–60); 5.9 (FIRA 12344); C 9.12.3 (399).
\textsuperscript{122} D 8.2.120 (Julianus); D 61.2.23.3 (Iavolenus); D 4.2.23.2 (Ulpian); D 48.39.18.7 (Callistratus).
\textsuperscript{123} See above Chapter 5.
\textsuperscript{124} For an extensive discussion of these documents see Palme (2003) 533–555.
\textsuperscript{126} The relevant laws are collected in C 11.48.
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There is now, however, consensus that the extent of the colonate was less pronounced than previously thought. Not all those working the land (or indeed called *coloni*) in late antiquity were permanently tied to a great estate and hence also continued to pay taxes in the customary way, through their city. This also means that the colonate’s emergence was regionally and chronologically diverse. This in the west, where rural mobility was by tradition not great, tenant-farming more widespread and rural people tied in patronage relationships to local landowners, it may have been a fairly automatic process that tenants registered with a great estate for tax purposes. In the east, and in particular in Egypt, where due to higher population density and more sophisticated market-oriented agricultural production there was more employment of mobile wage-labourers, permanent tax registration may have been a more gradual and patchy process. It is in the fifth- and sixth-century east that we encounter the terms *coloni adscripticii* or *enagrapheis georgai*. These terms describe tenants who a landlord registered on their city’s tax list, either as a tenant responsible for shouldering the tax burden attached to a particular plot on the landowner’s estate or as a tenant whose taxes were to be paid by the landlord. Again it is unclear whether such tax registration came about as an administrative imposition by the state, through coercion by landlords, for example of debtors, or through voluntary contract, which may have been attractive to wage-labourers in a competitive labour market. It is also unclear how many of such *coloni adscripticii* existed. What is clear is that, by becoming a *colonus adscripticus*, a tenant also committed to performing services for a landlord, such as, most importantly, pay rent, work the land and remaining on the estate. While the late Roman state acknowledged that *coloni adscripticii* were free, it increasingly came to define their status as ‘servile’, to emphasise, for its own tax purposes, limitations on their mobility. As Justinian declared in a law of 530 on the regulation of marriage between *coloni*, slaves and freeborn, a *colonus adscripticus* and his children stood, like slaves, under the *potestas* of a landowner. Even though their ‘servile status’ only concerned the relationship between *coloni adscripticii* and a landlord, not society at large, this legal framework consolidated a landlord’s control over some rural labourers.

To return to the subject of ‘estate prisons’, it seems to usually have been *coloni adscripticii* who were to be collected and re-presented in *τὸ ἅλκα* of a household in the deeds of surety that have this clause, as far as this can be reconstructed from the at times fragmentary evidence. This term *φυλακή* has, by those scholars who interpret the deeds of surety as documents bailing fugitive *coloni*, invariably been interpreted as denoting a place, the prison of a great estate. The interpretation may be confirmed by a further deed of surety from mid-sixth-century Oxyrhynchus that clearly established bail of a wrongdoer. It was addressed to Menas, the steward of a church, and concerned a freedman (Σουάλεαθέρου) who had apparently stolen gold from the steward’s house. Three men now guaranteed for the return of the gold and promised to produce the freedman for this purpose ‘in a public place in this city, without recourse to holy precincts, divine images or any attempt at asylum, in the ἁλκα of the hospital of the same holy church, where we received him’. Here the reference seems to be to an actual building.

Restraining a fugitive *colonus*, through, as the law phrased it, putting him in chains, was something that already Constantine had allowed. As we have seen, the state was interested in reducing rural mobility, so it is no surprise that it gave landowners much freedom or even encouragement to deal with escape of those tied to the land for tax purposes. In this context then, we may be able to see an overlap between the private and the public spheres, in the sense that landowners benefited from keeping labourers prone to flight under control, if necessary through confinement or enslavement, while the state benefited from constraining fugitive

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116 For the attraction of the arrangement to tenants see Sarris (2006) 174.
117 For a detailed discussion of these services see Filthman (2006) 190–192.
118 CJ 11.48.21 (330).
tax-payers. At the same time, landowners may also have supplied space on their estates to hold tax-debtors, which, certainly from the time of Justinian on, was not entirely illegal, as we have seen in Chapter 5. A fragmentary seventh-century list named fourteen village-elders from Teruthis in the district of Oxyrhynchus as being in the φυλακή of the household of one Anianus, and may refer to tax-debt.\(^{139}\)

Collaboration between civic authorities and private landlords, who often at least at the highest levels were identical anyway, was close, but we do not have to assume that this turned imprisonment on an estate formally into a ‘public institution’ or that such collaboration was a uniquely late antique development. As we have seen in the previous chapter, when it came to holding individuals, Roman state authorities had traditionally made use of non-civic spaces. Certainly, some deeds of surety equated the φυλακή of a household to a public place. For example, Zacharias, the steward of the church of Oxyrhynchus declared in 395/6, in a deed of surety addressed to Flavius Apion with regard to one Aurelius Pambechius, georgos enapographos on the Apion estate, that he would ‘hand him over in a public place without recourse to any place of sanctuary or letter of safe-conduct, where I received him, in the φυλακή of your honoured household.’\(^{140}\) Hardy thought such incidents to be a scribe’s confusion of two different phrases, but its appearance in the papyri is too numerous to really warrant this assumption.\(^{141}\) The phrase, however, was usually accompanied by a customary prohibition for the insured person to seek asylum, presumably with another landlord, the church or perhaps a monastery, and the reference to a ‘public place’ where the fugitive was to be produced may have been meant to emphasise this provision. After all, the phrase also appears in the above mentioned document apparently bailing out the freedman from the nosokomion of the church (prohibiting him to seek church asylum) where it certainly did not mean to equate the nosokomion with a public institution whose maintenance was imposed on the church as a liturgy.

Yet, there are features in these deeds of surety that complicate a neat picture of ‘estate prisons’. Strictly speaking, none of the deeds of surety mentioned directly that they dealt with already fugitive and confined coloni (even though they clearly expected potential flight). Furthermore, there are deeds of surety predating the sixth century, which did not use the phrase τῇ φυλακῇ, and which, in consequence, have not been interpreted as documents establishing bail for fugitives. Still these are formally strikingly similar to those deeds of surety that use the phrase. In the earliest of these documents, for example, dating to 345 and addressed to a town councillor of Oxyrhynchus, the signee, a man called Aurelius Paris, a contractor for field irrigation, promised financial security to ensure that another man, Aurelius Aion, a wine-grower, would remain in the village of Amata, cultivate his land, ‘fulfilling everything which has been agreed by him.’\(^{143}\) The document may refer to a contract of employment on the town councillor’s land, or it may refer to an agreement on Aurelius Aion’s tax registration through the town councillor or the city of Oxyrhynchus. No mention is made of the φυλακή or for that matter, of any place where Paris collected or was ordered to take Aion, if required. Neither is Aion called a georgos enapographos. In all other respects, however, the document, and other earlier ones are similar to the later deeds of surety that incorporate the missing aspects.

Furthermore, some deeds of surety order labourers to be presented not in the φυλακή of a private household, but in a ‘public place of the city’ (ἐν τῇ δημοσίᾳ τόπῳ ἐπὶ τῆς πόλεως).\(^{144}\) In documents dated to the later sixth century, the public place in the city was at times further qualified as ἐν τῇ φυλακῇ τῆς αὐτῶν πόλεως; as, for example, in a deed of surety dated 588 and addressed to a woman of illustrious senatorial rank called Flavia, from Oxyrhynchus, perhaps Flavia Anastasia, a well-known landowner. Where this phrase was used, the addressee of the contract was usually someone who also held a civic office connected to imperial tax collection, most notably, as we know Flavia Anastasia did, that of pagarch, the chief tax collector.\(^{144}\) Of course, as we have seen in Chapter 5, such civic officials

\(^{139}\) P. Oxy xvi 2516 (seventh century). On this lat and its interpretation see Torallas (2006) 105.

\(^{140}\) P. Oxy xxiv 2478 (951/6). Παράδειγμα δύο τόπων ἅπαντα τούτων τούτων προσφυγῆς καὶ λόγου ἔναν αὐτῶν καὶ παραδίδεσθαι ἐν τῇ φυλακῇ τοῦ Καθάρου ὀμοί\\ν οὖν. See for comment on this papyrus Keenan, Manning, Ylitalo-Flintk (2004) p. 8.3.4. The same formula appears in P. Oxy 1 173 (579), P. Oxy vi 996 (84) and P. Merr. ii 98 (seventh century). The last document mentioned the φυλακή of Kekes.

\(^{141}\) Hardy (1931) 69 n.2.

\(^{142}\) P. War. i 2 (343). For a similar fourth-century document see P. Oslo iii 113 (346). See also P. Heid. iv 397 (450); P. Lond. v 1759 (472) for fifth-century documents that do not have the clause or mention georgos enapographos.

\(^{143}\) P. Heid. iv 306 (433); SB avii 1951 (492); P. Cairo no. 11972 (354). From the archive of Dioscorus. Note, however, also the curious phrase in P. Lond.inv.1229 (sixth century), which orders return of apparently a georgos enapographos ἐν τῇ φυλακῇ τοῦ Καστίου τούτων τῆς πόλεως, which may refer to the Casarum of Oxyrhynchus, now possibly transformed into a church. The papyrus is too fragmentary to allow for establishing a firm context. For discussion see Hickey (2004).

\(^{144}\) P. Oxy xix 2340 (988): παράδειγμα δύο τόπων ἅπαντα τούτων προσφυγῆς καὶ λόγου ἔναν αὐτῶν καὶ παραδίδεσθαι ἐν τῇ φυλακῇ τῆς αὐτῶν πόλεως; see also P. Oxy xix 4756 (590), also addressed to Flavia PSL ii 12 (between 625 and 647), addressed to the pagarch Flavius Julianus;
often maintained prison facilities, even though their use was not always an entirely legal one. As the pagarch was usually recruited from the ranks of wealthy landowners, the potential use of a public prison to restrain fugitive coloni perhaps emblematises the double nature of the contract: it was to ensure labour to the pagarchs in their role as landowners and tax to the pagarchs in their role as tax collectors.

Yet, it might also be significant that the labourers in the deeds of surety that mention the φυλακή of a city usually do not seem to have been georgoi enapographoi. There also exist deeds of surety addressed to pagarchs that do not involve agricultural labourers at all, but a soldier, or a priest, to be presented to the public φυλακή. Whether they had committed an offence for which they needed to be bailed is unclear, but it is certainly unlikely that it was flight from the soil. The conclusion that those deeds of surety that invite for return of an insured person to a φυλακή, but only these, refer to already fugitive coloni, in fact hinges on the understanding of the term φυλακή as exclusively meaning prison, in the sense of a designated space of confinement on an estate or a city. Yet, φυλακή, just like vincula is an ambiguous term, but ‘prison building’ is only its secondary meaning. It denotes any form of custody or safe-keeping. It must be significant that the appearance of the phrase ἐν τῇ φυλακῇ in the deeds of surety, both that referring to the φυλακὴ of a household and that of a city, developed around the same time as the appearance of coloni adscriptici or georgoi enapographoi in contemporary sources and their distinction from other coloni, which in itself is a reflection of the ever tighter fiscal control that sixth- and seventh-century public officials and landowners sought to exercise upon some of those who worked the land. We can very tentatively postulate the possibility, then, that the phrase ἐν τῇ φυλακῇ did not refer to the actual place where someone was to be produced and confined, but to the localisation of their tax liabilities: the presentation of the georgos enapographos, whenever required, ἐν τῇ φυλακῇ of his landowner confirmed that for fiscal purposes he was under control of the latter, while others remained registered directly through their city and hence were to be presented to their pagarch or other civic official.

However we interpret the meaning of the term ἐν τῇ φυλακῇ, it mostly appears in the context of public tax or private debt liabilities. There is little evidence that late Roman landowners assumed criminal jurisdiction over their tenants, becoming responsible for the maintenance of law and order in the countryside with the state’s blessing, or that prisons played a role in such alleged processes. Certainly, several late Roman laws from the first half of the fifth century originating from the context of the Donatist schism in North Africa granted some punitive authority over coloni to landowners by stipulating that domini should return their slaves and coloni to the right faith through corporal punishment (verbera). The issue behind these laws was, however, less to prevent landowners from illicitly acting as judges in such cases, complete with the running of prisons, than from the suspicion that they, or rather their estate stewards, would do little about or even be complicit in such wrongdoing.

A papyrus at times cited in the context of criminal jurisdiction by late antique landlords lists a number of people ἐν τῇ φυλακῇ, some of whom were apparently accused of cattle theft. Among those who had delivered the culprits were a defender, a riparius, and a comes chartularius, titles that had an equivalent in the public realm. There was a high degree of overlap between titles of civic officials and estate officials in Byzantine Egypt, which makes it difficult to decide whether what we are dealing with here was a private context at all. Furthermore, the document’s date of origin may not be earlier than the eighth century. Yet, even if it can be dated to an earlier period and taken as referring to imprisonment on a landed estate, the papyrus does not present evidence for a landowner’s self-assumed or publicly imposed authority to police social misconduct in the countryside. Cattle theft was a wrongdoing first and foremost to the

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142 See also Kennan, Manning, Yiftachel-Firenko (2014) 438, where the ‘fiscal nature’ of deeds of sureties is warned: ‘they exist to help protect the government’s revenue, not simply to control a semi-ser vile labor force’. 
145 A similar concern was held by laws that ordered landowners to deliver heretics, deserters or robbers (latrones) hiding on their estates to the public courts: CTH 9.292.1 (58); CTH 7.11.7 (58); CTH 7.11.23 (59); CTH 16.3:53-4: (412); CTH 9.39.2 (451). 
Prison and punishment

detriment of the landowner. As we have seen above, a master did not have
the right to start a law-suit for theft against a slave, nor a patron against his
freedmen, clients or employees. He was expected to deal with such behav-
ior internally. While we lack the evidence for whether this provision
extended to coloni by the sixth century, we do know that a colonus
adscriptus could not sue his landlord in any civil or charge him for a
criminal matter, with the exception of extortion, precisely because, like a
slave or freedman, he was under the landlord’s potestas. It can therefore
not be excluded that the same may have applied the other way around, to
protect a landlord’s honour. It was certainly under this provision that the
church stewards at Oxyrhynchos mentioned above acted against his freed-
man for the latter’s theft of gold. Some property-owners, then, may well
have wished to sort out such behaviour by their dependents without
interference of the public authorities, and had the right to do so. This
right was not new in late antiquity, but its extension to coloni may have
been.

The terminology applied in the deeds of surety perhaps creates more
riddles than it solves. Overall, the evidence is too inconclusive to firmly
claim that there were private prisons on estates with a function equivalent
to the public prison, whether in a semi-feudal manner or as a liturgy
imposed by the state. From this also follows that we should not make the
termology of the papyri fit a preconceived idea of spatial features of late
antique Egyptian estates, about which we have very insufficient knowl-
edge. In light of what we know about late Roman domestic space and the
management of domestic dependants, we should not imagine the
ϕολοκε of the papyri (if it refers to a place) or indeed the carcer privatus
of the laws as a purpose-built and routinely managed estate prison. Both
ϕολοκε and carcer may have come into existence by employing a variety of
spaces, as was customary in the late Roman household. Furthermore,
where the confinement of colonus adscriptus was concerned, either for
escape or for offences below the level of public crime, comparison with
the treatment of slaves suggests that landowners may not have wanted to
detain them for too long, for it would have impacted on their productivity
and diminished the deterrent aspect of punishment. In fact, wherever we
hear about punishment of coloni the suggested method, as with slaves, was
flogging. At the same time, if we choose to read the deeds of surety as
documents establishing bail, we may imagine that being confined had a

Private power and punitive confinement

powerful coercive effect on a fugitive colonus, forcing him to find an
affluent guarantor.

Monastic prisons

From the fourth century on, the coenobitic monastery, a form of Christian
asceticism that emphasised communal life, emerged alongside the worldly
household as an institution that sought to administer punishment of its
members. We are informed about late antique monastic penal systems in
minute detail thanks to the Christian literary genre of monastic guidelines
and reflections, also called rules (regulae), though not necessarily by their
authors. Late antique rules developed as a consequence of the success of the
coenobitic lifestyle and the great number of men and women attracted to
it, which led to it becoming the dominant monastic form in the west, and
one of the most pronounced in the east. While embracing asceticism in
itself was seen as an act of penance for general human sinfulness; leaders of
monastic communities worried that life in common generated many
further temptations for individuals and hence needed to be ordered. As
normative sources, monastic rules of course do not give us any indication
of how frequent or widespread certain punitive methods were, although
they were certainly also institutionalising practices. They offer, however, a
window into punitive ideals and concepts. As we shall see, imprisonment
played a role in these concepts from early on, both in the east and in the
west, but again, as in the lay household, this punitive use of space came in
the form of segregation of culprits in multifunctional spaces, rather than as
confined to purpose-built prisons.

Late Roman law, at least under Justinian, fully accepted that monastic
communities were free to order their internal discipline as long as it did not
concern offences that qualified as public crimes or were directed against
third parties. Monastic leaders had the legal right to punish their subordi-
nates. This, in turn, meant that monks and nuns, even though it was never
clearly specified that they were under the potestas of their abbot or abbess,
were unable to accuse the latter of maltreatment at a public court.

113 On the development of monastic rules see Diem (2001) 715–728. Note that monastic writers, such
as Basil, did not necessarily think about their writing as establishing firm ‘regulations’ of monastic
114 For the concept of Christian ascetic life as one of penance see below Chapter 8.
115 Entry into a monastery terminated pater potestas, but monks and nuns kept a limited right to
Justinian here as elsewhere seems to have institutionalised social practice. Even in cases of very serious monastic leadership crises, such as the accusation against Shenoute, abbot of the Pachomian White Monastery in the Thebaid (d. 466), of killing a monk through excessive beating, we hear very little about appeals to outside authorities.  

149 At most, appeals that have been recorded were lodged with ecclesiastical authorities, a practice that Justinian, with a view to strengthening episcopal authority, turned into law.

150 For example, Palladius of Helenopolis recorded in his <i>Lausiac History</i>, a description of monastic life in Egypt (written ca. 419–420), an incident in the Pachomian female monastery at Tabennesi, where a nun had been falsely accused of having indecently talked with a man. The nun committed suicide, and so did, shortly afterwards, her accuser. Apparently being unable to solve this crisis by themselves, the remaining nuns reported it to their priest, who excommunicated all of them for seven years for complicity in calumny.

151 The nature of late antique monastic literature may of course have prevented the widespread transmission of stories that undermined the authority of monastic leaders. Yet, the modelling of the coenobitic community on the family and their spiritual leaders as 'father' or 'mother', well established by the early fifth century, the underlying ideal of complete withdrawal from the secular world and submission to God's ultimate authority, as well as quite practical social dependency of monks and nuns on their monasteries, might also often have inhibited most from seeking outside external justice, particularly in rural areas.

152 The law, however, specified that where ascetics had committed a wrong-doing against someone outside the monastery, in particular if it involved a public crime, they were to be brought before a public court. Justinian, similar to his specifications on clerical jurisdiction, envisaged collaboration between a public judge and the local bishop on such matters.

153 It is likely, however, that, due to the increasing social importance of late antique monasteries for their local communities, such cases were in effect often handled internally as well. This is what a recurrent motif in late antique hagiography suggests: in a number of stories narrating the lives of 'cross-dressing' saints, the heroine, having entered a monastery disguised as a man, was accused of having fathered a child by a woman living near the monastery. Although this clearly could have been defined as <i>stuprum</i>, a public crime, she was invariably tried, with seeming consent of the victim and her family, by her abbot and (refusing to reveal her female identity) expelled from the monastery, but readmitted after a time of penance. One of these protagonists, Marina, was also subject to further penalties of cooking and cleaning upon return. The babies, in turn, were taken into the monastery.

154 For the point of the stories, which was to praise the saint's endurance as a victim of the same female sinfulness which she had sought to overcome through her embrace of male asceticism, the identity of the judge was not the most important matter, even though submission to the abbot's verdict of course underlined the heroine's acceptance of monastic authority and obedience and her own inherent sinfulness. The stories may therefore reflect that monasteries by this point had become accepted centres of justice in their localities, particularly, once again, where wrongdoing was of a sexual nature and victims keen on deflecting blame.

Late antique monasteries hence were, and perhaps had to be preserved their integrity, fairly enclosed punitive spaces. The stories of the 'cross-dressing' saints also give a reasonable idea of monastic penalties, such as work assignment and expulsion. Both were also mentioned in late antique monastic rules. Many of these, particularly Western ones, suggested a graded penal system with a fixed penal catalogue becoming increasingly more severe upon repeat offending or failure to submit to the superior's authority. Others, in particular the Short and Long Rules by Basil of Cassarea (clearly inspired by Platonic values), support the idea of fitting penalties to the offence, and the disposition of the offender.  

155 Most monastic rules foresaw excommunication from the monastery as a whole only as a last resort, if the trespass was very grave. Their emphasis was on healing and education, as also suggested by the use of the term <i>emendare</i> in

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149 For a full discussion of the various crises surrounding Shenoute's leadership style, particularly in relationship to the women in his monastery, see Krawiec (2002) 26–50.


151 Palladius, <i>Historia Lausiacae</i> 40 (PG 34:1095–1106).


153 NJust 87; NJust 113.31.s; NJust 67. See above Chapter 3.
the context of punishment in many Latin rules. The aim was to set an individual member of the community back on the path to salvation, but also, since this by necessity included reintegrating the culprit into a closely-knit group, to ensure that the community could do so without danger. It is therefore not surprising that late antique monastic rules also valued the visibility, humiliation and hence deterrent effect inherent in some penalties proposed, such as public rebuke or beating.

The same principles also underlay to some extent the monastic penalties of confinement. Punitive uses of space involved, in the first place, exclusion from either table or oratory, or both. This was a form of excommunication, but did not automatically mean spatial segregation. For example, the Rule of the Master (written in mid-sixth-century southern Italy) envisaged an unruly monk to eat separately from the others, but in the same room. He was, however, not allowed to participate in making the sign of the cross before the meal. Equally, a monk excluded from the oratory could be present during service, but was prohibited from participating in hymn-singing. Some rules, however, also prescribed complete isolation from the entire monastic group. In the Rule of Benedict (ca. 540) this was a more severe penalty than excommunication from table or oratory. Rather than just non-participation in communal activities it meant entire closure of common space to culprits.

In other monastic writing, isolation was seen as the right measure for certain wrongdoing, such as, in Basil of Caesarea’s Short Rule, for being angry when awakened from sleep, or, for the fifth-century Western Rule of the Four Fathers, for idle talk or murmuring. In the latter case, silence that came with isolation may have been seen particularly fit for the misdeed. Unlike spatial segregation in the lay household such penalties were not represented as an alternative to beating. Both beating and confinement had their places in the penal catalogue. Some monastic rules saw beating as a more severe punitive method, for those who had revealed themselves as ignorant through their stubbornness; others as a method fit for certain offences, such as those committed manually (e.g. theft), rather than verbally (e.g. murmuring).

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Pachomius, Paecepsa atque indicia 15 (Boon 69): monasterii regulae emendabiles; for more references see above Chapter 1.

164 Lehmans (1951) 80-81; Pancer (2000) 273.


166 Rule of the Master 73.8-73.11 73.17 (SC 106:308-310).


168 Basil, Short Rule 44 (PG 311:110); Rule of the Four Fathers 15 (SC 297:201).


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Spatial segregation was a measure that can be traced back to the origins of coenobitic monasticism. We already find it pronounced in the Latin version of the Pachomian Rules translated by Jerome in 404, who pressured an organically grown array of Greek texts collected at a Pachomian monastery at Canopus near Alexandria (modern Abu Qir), called Metanoia. As other surviving fragments in Coptic, Greek and Ethiopian show, only Jerome’s translation contained a penal catalogue. Yet, contemporary or even slightly earlier biographical evidence on the fourth-century monastic leader often credited with the introduction of coenobitic monasticism into the Egyptian countryside, for example the Bohairic Life of Pachomius, suggests that, when his monastic communities had become more complex, Pachomius himself had introduced a more sophisticated internal penal system beyond mere expulsion. The Paralipomena, a fifth-century Greek collection of Pachomian anecdotes, narrated how Pachomius ordered a monk who had been showing off through producing two masts while only one had been required, to be confined to his cell for five months, without being able to receive visitors.

One of the purposes of spatial segregation as a punishment in the late antique monastery was, similar to segregation in the lay household, separation from the social life and the central spaces of the community, in order to shame and humiliate, or, as the fifth-century Western ascetic thinker John Cassian put it, ‘to disturb’. The Rules of Pachomius also expressed the hope that a monk may not return ‘until he was cleansed from filth’. This implies that segregation was to purify the community. The focus of spatial segregation was hence on exclusion, as we have also observed in the lay household. In contrast to the lay household, however, exclusion from daily monastic life also meant, like ecclesiastical excommunication, primarily exclusion from the routines and rituals understood to holistically support the path towards salvation, such as prayers, blessings and meals. The Rule of the Master, for example, strictly prohibited food brought to a confined monk to be blessed with the sign of the cross.
Prison and punishment

Often the place of segregation seems to have been a monk’s individual cell. Yet, just like in the lay household, at times places chosen were also meant to visibly highlight the humiliation of the offender. This was particularly the case with confinement in a monastery’s gate-house, or the ‘remote cell of the porter’ (cella salutatorii remota), mentioned as a punishment in Caesarius’ Rule for Nuns, and possibly also the Rules of Pachomius. In Shenoute’s White Monastery the gate-house was the place where the novices lived and where beating was administered, so being sent here emphasised the distance from the centre of the monastery and the shame of downgrading. The Rules of Pachomius also envisaged confinement in the infirmary, where an unruly monk was to be considered as one of the sick. What the Rules of Pachomius proposed, then, following the Christian definition of sin, was that offending was a form of disease. Yet, confinement of some offenders was not only for the security of the community, to prevent moral pollution, but also curative, so they ‘could return to the truth’ (doene redest ad veritatem). Palladius’ Lausiac History mentioned incidents of Egyptian hermits who put fellow-hermits who had fallen into the trap of pride in chains to cure them with the antidote of physical humiliation. The Rules of Pachomius went a step further by ordering diseased offenders also to reside among the real diseased, but to their own benefit. In the same spirit, but with more vagueness, some later Western rules implied that a monastic leader would choose a room in relation to the disposition of an offender.

In addition to this emphasis on reform and healing through the choice of particular spaces, monastic rules put an importance on the ordering of time that is quite unprecedented compared to the commentators on spatial segregation in the lay household. Monastic rules were frequently anxious that confined members of the community should not be idle, and in company of mentors. Caesarius of Arles suggested in both his Rule for Monks and in his Rule for Nuns that those excommunicated and isolated sit with a more senior brother or sister to read the Scriptures, as long as it took to be recalled to reconciliation. The sixth-century Italian rules assigned work. The anecdote included in the Paralipomena about the brother who had produced two mats instead of one reported that Pachomius ordered him to produce two more daily while in confinement. Work assignments resemble the punishment of slaves, especially if they were connected to downgrading. The focus, however, was not only on bodily submission through work, but on a learning process, although the two were not mutually exclusive. The monk ordered by Pachomius to weave two mats would be reminded, on a daily basis, of his boasting. The monk or nun ordered to sit with a senior would be faced with an example of virtue. Both work and reading would also allow a confined member of the community to still participate in monastic occupations, and their orientation of both body and mind towards the journey to God. In fact, it was a harsher punishment to be condemned to idleness, without the opportunity of ascetic endeavour, while in confinement.

As with the lay household, there is, however, no indication that late antique monasteries had formal prison space. In many ways, the flexible use of different spaces in the monastery for confinement sufficiently fulfilled the functions late antique monastic rules associated with spatial segregation. It is only from the early seventh century on that we encounter the term carcer or φυλακή in monastic writing to describe a particular space in the monastery. The carcer was meant to address the sin of pride in the Communal Rule, usually thought to have been composed by the Irish missionary Columbanus for his triple monastery Annegray, Luxeuil and Fontaines around 590, but perhaps only written after his death in 615 by his successors who needed a written record of his administration of discipline. In the early seventh-century east, John Climacus, a monk at the

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182 See e.g. Oriental Rule 57 (SC 298:490).
183 Caesarius, Rule for Nuns 65 (SC 345:292); Pachomius, Praxeipha atque indicia 4 (Boon 65) specifies isolation, sceptrum manum, which might indicate the gate-house; on the role of the gate-house in the White Monastery see Krawiec (2002) 43.
186 Caesarius, Rule for Nuns 34.1 (SC 345:214); Ferreolus, Regula ad monachos 39 (PL 66:977).
187 The sixth-century Italian rules assigned work. The anecdote included in the Paralipomena about the brother who had produced two mats instead of one reported that Pachomius ordered him to produce two more daily while in confinement. Work assignments resemble the punishment of slaves, especially if they were connected to downgrading. The focus, however, was not only on bodily submission through work, but on a learning process, although the two were not mutually exclusive. The monk ordered by Pachomius to weave two mats would be reminded, on a daily basis, of his boasting. The monk or nun ordered to sit with a senior would be faced with an example of virtue. Both work and reading would also allow a confined member of the community to still participate in monastic occupations, and their orientation of both body and mind towards the journey to God. In fact, it was a harsher punishment to be condemned to idleness, without the opportunity of ascetic endeavour, while in confinement. The focus of the rules was hence not just on safeguarding the community or the ritual outcasting of offenders, but also on their spiritual development, with particularly the sixth-century Latin rules calling the period of isolation a period of penance (penitentia).
188 As with the lay household, there is, however, no indication that late antique monasteries had formal prison space. In many ways, the flexible use of different spaces in the monastery for confinement sufficiently fulfilled the functions late antique monastic rules associated with spatial segregation. It is only from the early seventh century on that we encounter the term carcer or φυλακή in monastic writing to describe a particular space in the monastery. The carcer was meant to address the sin of pride in the Communal Rule, usually thought to have been composed by the Irish missionary Columbanus for his triple monastery Annegray, Luxeuil and Fontaines around 590, but perhaps only written after his death in 615 by his successors who needed a written record of his administration of discipline. In the early seventh-century east, John Climacus, a monk at the
St Catherine monastery at Sinai (and possibly correspondent of Gregory the Great), described a monastic prison (δυσκηρία) in his didactic treatise Ladder of Divine Ascent. John had once visited a renowned abbot of a monastery on the outskirts of Alexandria, who exhorted his disciples to love each other and, where someone showed hatred, ‘banished him like a convict to a separate monastery’ about a mile from the main monastery. Here, in a dark and filthy place, the monks were to go without cooked food, dwell in separate cells, engage in uninterrupted prayer, all the while weaving baskets, for as long as the abbot thought appropriate.\(^{195}\) While it is not entirely clear what was meant by the term carcere in Columbanus’ Rule, John Climacus’ description unmistakably shows a purpose-built facility. In the West, it is from the time of the Carolingian onwards that we find routine recommendations for a prison-building in monasteries.\(^{196}\) At that point, confinement in the monastic prison seems to have come to replace expulsion as the most severe penalty. The rise of prison-buildings may therefore be connected to the development of irreversible monastic vows in the early medieval period, which meant that expulsion was not an option anymore and all sins had to be expiated internally.\(^{197}\) It should be noted, however, that at least in sixth-century Italy unruly monks and nuns, and particularly those who tried to leave the monastic life, were also transferred to different and ‘stricter’ monastic communities, in order to circumvent the problems that arose with the appearance of monastic vows.\(^{198}\)

Overall, Late antique norms, and perhaps practices, of monastic punishment had a strong spatial aspect. Those who endangered their own path to salvation and the community’s spiritual life were to be distanced to a remote place in the monastery, in a sort of ‘internal’ exile, or to a secondary monastic community. There was a very conscious development of this form of excommunication towards confinement. This was perhaps modelled on the domestic methods of punishment described earlier in this chapter, but had a more pronounced emphasis on ordering space and time of confinement to facilitate self-reflection. The penalty of monastic confinement, however, was not called imprisonment during late antiquity, and neither was the space of confinement called ‘prison’. Perhaps monastic writers of this period did not make the connection with the public prison, or, as for free members of the lay household, it was deemed too controversial due to the prison’s image of abuse. The fact that we see monastic writers both in the east and in the west, quite independently from each other, embracing the concept from the early seventh century on, shows, however, that suffering in the prison, and its coercive and punitive aspects, also struck a chord with the monastic imagination. As we shall see in Chapter 8, this built on roots reaching back into late antique concepts of asceticism. For now, however, let us return to the public sphere.

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\(^{195}\) John Climacus, Ladder of Divine Ascent, step 1 (PG 88:68); εν τοι δημοσιϊν μοναστηριον ους καθαροντες διαμοιραζοντα τοιοατοι. For the term δυσκηρία see step 5 (PG 88:76 A 77) and below Chapter 8; on John Climacus see Chitty (1966) 172–174.


\(^{197}\) Item (2005) 65–78.

\(^{198}\) Epist. 63 (Casado and Baller: 164–166); Gregory, ep. 4.61 ep. 4.51; pp. 8.8 and 9 (CC 140:140A:223, 212, 315–316).